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Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA AMMONIA CO., a California corporation, Complainant, vs. PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, Defendant.	Case No. 7633 (Filed May 24, 1963)
VALLEY NITROGEN PRODUCERS, INC., a California cooperative corporation, Complainant in Intervention, vs. PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, Defendant in Intervention.	

Martin McDonough and James Lindley, for California Ammonia Co., complainant.
Kelso, Cotton & Ernst, by Godfrey L. Munter, Jr., for Valley Nitrogen Producers, Inc., complainant in intervention.
F. T. Searls, John C. Morrissey and Ross Workman, for defendant.
W. E. Waldrop, for the Commission staff.

O P I N I O N

Public hearing in these matters was held before Examiner Emerson on September 4, 1963 and on January 7 and 8, 1964, at San Francisco. The matter was submitted on briefs, the last of which was filed on February 3, 1964, and is ready for decision.

The complaint of California Ammonia Co., filed May 24, 1963, seeks an order of this Commission requiring defendant, Pacific Gas and Electric Company, to supply complainant's chemical plant under the terms of defendant's electric rate Schedule A-18. The complaint recites that complainant owns a chemical plant near Lathrop in San Joaquin County; that said plant has been purchasing electric energy from defendant under defendant's electric rate Schedule A-13; that when complainant became aware of the existence of Schedule A-18, complainant applied to defendant to permit complainant to receive energy under the provisions of Schedule A-18 instead of Schedule A-13, and that defendant has refused and continues to refuse to supply the plant under Schedule A-18.

Schedule A-18 provides, as to the territory in which it is applicable, as follows:

"Territory:

> The Chemical Plant of The Dow Chemical Company, near the City of Pittsburg, County of Contra Costa.
> The Powder and Chemical Plant of Hercules Powder Company, in the Town of Hercules, County of Contra Costa.
> The Chemical Plant of Shell Chemical Corporation, near the City of Pittsburg, County of Contra Costa."

Complainant claims that its chemical plant has like characteristics of use of electrical energy to the chemical plants to which the territorial applicability (quoted above) is restricted; that the chemicals produced in complainant's plant are the same as those produced by the chemical plants listed in Schedule A-18; that the cost of electrical energy is a substantial part of the total cost of manufacture; that Schedule A-18 results in a substantially lower charge for electricity than Schedule A-13 and that as a result of

the unfavorable difference in the cost of electrical energy complainant is prevented from competing with the Schedule A-18 plants on an equal or fair basis. Complainant alleges that the action of defendant in supplying electrical energy to the Schedule A-18 plants at the rates of such schedule and not to complainant is grossly discriminatory, is without any valid or logical basis of distinction, and causes great injury and damage to complainant.

By its answer, filed June 21, 1963, defendant essentially denies all of complainant's allegations. As its first affirmative defense, it alleges that complainant is not willing, ready and able to take service under the interruptible provisions of Schedule A-18; that complainant has complained to defendant about minor circuit interruptions; that complainant's plant cannot be economically operated if its electric supply is subject to interruptions of up to 2,190 hours per year as provided for by Schedule A-18; and that defendant has expended a substantial amount of time and money to prevent minor circuit interruptions and system disturbances of the type complained of in the past.

As its second affirmative defense, defendant alleges that the amount of electrical energy used by complainant is substantially less than that used by the plants listed in Schedule A-18; that the demand of complainant's electrical load is so insignificant that the right of defendant to interrupt complainant's service is of no benefit to defendant; and that because defendant would not be benefited, the loss of revenue that would be suffered by having complainant on Schedule A-18 would result in an unfair and unwarranted burden being placed on defendant's other ratepayers.

Valley Nitrogen Producers, Inc., on August 30, 1963, filed a petition for leave to intervene. Said petition recites that Valley Nitrogen is a farmers' cooperative, whose plant is at Helm, Fresno County, existing for the purpose of manufacturing and marketing fertilizers and agricultural chemicals and alleges that the Schedule A-18 plants all manufacture competitive products to those manufactured by Valley Nitrogen, and all consume electrical energy supplied by defendant in amounts and under circumstances effectively identical to those of Valley Nitrogen; that defendant has been requested to supply the plant at Helm under the Schedule A-18 rate and that such rate has been refused it; that the existing restriction of Schedule A-18 to its competitors is grossly discriminatory, unduly preferential and unlawful; that refusal to supply the plant at Helm pursuant to Schedule A-18 is without any valid and logical basis, has caused, is causing and will cause great injury and damage to Valley Nitrogen. The petition seeks an order of the Commission requiring defendant to supply electrical energy to the chemical plant at Helm pursuant to a contract similar to the contracts with Schedule A-18 plants, and for reparations.

Defendant's answer to the complaint in intervention is to all practical effects the same as its answer to the complaint of California Ammonia.

Leave to intervene was granted on September 4, 1963, upon oral withdrawal of the plea for reparation and the ruling of the presiding officer that no showing would be made with respect to reparations.

Tariff Schedule A-18, "Interruptible Primary Industrial Power", was filed by defendant on November 4, 1959, pursuant to this Commission's Decision No. 59083[1/] and became effective on the same date. It is applicable to three phase service at standard voltages of 60,000 volts or higher supplied at the high voltage terminals of a substation owned or leased by the customer and service under the schedule is supplied if, in the sole judgment of the utility, there exists sufficient spinning reserve and transmission margin. As hereinabove noted, the territorial limits specified in the schedule effectively limit the schedule to three specific chemical plants in Contra Costa County. In addition to setting forth the rate to be charged and special conditions pertaining to billing calculations, the schedule specifies that service thereunder shall be in accordance with contracts authorized by this Commission's Decision No. 59083, which contracts provide, among other things, that service is subject to interruption and curtailment when either the spinning reserve or transmission margin is needed to meet the demands of regular customers on firm rates or when there is a threatened need for such reserve or margin.

The contracts referred to in Schedule A-18 have a relatively long history of renewals, modifications and amendments stemming from original contracts entered into more than 30 years ago. The original contracts with Hercules (1931) and Shell (1933) were made by defendant. The original contract (1916) with what is now known as Dow, was made by Great Western Power Company, a utility

1/ Issued September 29, 1959, in Applications Nos. 41053, 41054 and 41055.

later absorbed by defendant. The Commission takes official notice of its decisions respecting these contracts, from their origin to the present.[2/]

One of the immediate effects of the economic depression of the 1930's was that electric utilities experienced substantial losses of load. Intensive sales promotion and load building efforts ensued as utility generating plants became idle or partially shut down. Industrial loads with high load factors were particularly sought, certain promotional rates were offered and efforts were made to convert either existing or prospective privately generated electric energy to the central station power of the public utilities. The Hercules, Shell and Dow plants were such desirable loads. Their electro-chemical operations required electric energy around the clock; one generated its own electricity, the others contemplated it; their products, including chemicals for oil refining, required low-cost power; their electric demands and consumption would help provide needed utility revenues and help to "fill in the valleys" in the utilities' load curves. In effect, they would be consumers of "surplus" power. Their business was obtained through individual contracts whose terms and conditions were similar. One important provision of the early contracts was termed the "Shut Off Provision" which provided, in essence, that the chemical plant, after notice from the utility, would shut down or otherwise discontinue taking power for a consecutive period not exceeding three months in any one year. In an early decision respecting these contracts, the

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2/ Specifically, Decisions Nos. 23061, 23699, 24101, 26681, 28223, 28496, 29704, 32430, 32934, 33171, 37954, 38211, 38791, 40281, 46251, 46394, 46879, 46932, 46946, 46947, 47346, 48202, 48963, 49877, 57058, 59083, 61902, 63565.

Commission noted that Great Western Power Company (the stock of which was controlled by defendant and the plant of which was operated in conjunction with that of defendant) had promised to render the same class of service to any electro-chemical consumer who demanded it.[3/]

With the passage of time, the plants expanded and the increasing electric loads of the three chemical plants, together with rate revisions, occasioned several renewals and modifications of the contracts. In 1959 defendant sought authority to carry out the terms and conditions of so-called "new agreements" with the three plants.[4/] Among other things, the new contracts provided for "interruptions" as well as curtailment, the interruptions being accomplished by relays automatically disconnecting the plants upon a drop in the supply frequency. The three month curtailment (or shut down) provision, specified as an aggregate of not more than 2,190 hours in any contractual year, was continued. Dow and Shell were accorded the right to install electric generating equipment and to generate electricity within their steam power balance, in order to prevent economic waste, with the proviso that if such generation idled any of defendant's facilities, Dow and Shell would make defendant whole. The electric rates for all three plants were identical. By its Decision in these matters,[5/] the Commission authorized the carrying out of the terms of the contracts, directed

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3/ See Decision No. 28496, issued January 13, 1936, in Application No. 20283.

4/ Applications Nos. 41053, 41054, 41055, filed April 20, 1959.

5/ Decision No. 59083.

defendant to file tariff sheets covering the service and designated such sheets as "Schedule A-18, Interruptible Primary Industrial Power".[6/] By such Commission action, the three contracts were brought into regular tariff form.

The only curtailment of service to the Hercules, Shell and Dow plants since contracted service was first instituted, occurred during the general system power shortages of 1947 and 1948. No curtailment, under the terms of the contracts, has occurred since August 22, 1948. The evidence is clear that defendant, in determining its system power needs, looks upon the three plants as one curtailment group or power-block unit.

The operational, curtailment, contractual and tariff treatments accorded the chemical plants of Dow, Shell and Hercules, from the first contracts to the present, clearly demonstrate that these power users collectively constitute a class of customer and have been so treated by defendant and so considered, at least since 1959, by this Commission.

The Hercules, Dow and Shell plants produce anhydrous ammonia. The principal product of the California Ammonia and the Valley Nitrogen plants is anhydrous ammonia. Ammonia is a bulk commodity sold in a highly competitive market in which all five plants are engaged. All five plants have high load factors. The cost of electricity is a substantial factor in the manufacturing cost of ammonia at all five plants. The five plants are the only major producers of ammonia on defendant's system. During the year 1963,

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6/ Copies of said tariff sheets constitute Exhibit No. 7 in this proceeding.

the peak kilowatts and peak month kilowatt-hours of the plants were as follows:

Plant	Peak KW	KWH
Hercules	17,280	11,034,000
Dow	37,814	25,556,400
Shell	19,800	14,814,000
Cal Ammonia	6,560	4,328,000
Valley Nitrogen	10,800	7,536,000

The evidence shows that the useful interruptibility features of Schedule A-18 operations can be applied to service for the California Ammonia and the Valley Nitrogen plants only by defendant modifying its existing procedures for recovering its system spinning reserve and by correspondingly modifying certain measuring, relaying and tie-line deviation equipments on its system. In part the need for modification arises from the relative magnitudes of the plants' loads as compared to the system load and in part from the geographical location of the plants. The evidence also shows that the benefit, to defendant, of the interruptibility feature as applied to Hercules, Dow and Shell has reached its limit of usefulness, also because of the relative magnitudes of plant load to system load and, further, that defendant will in the future have to make modifications in equipment similar to those required to handle or control interruptions to the California Ammonia and Valley Nitrogen plants. Curtailment at any or all of the five plants (as differentiated from interruptions), being made upon advance notice, may be beneficial to defendant in any instance.

While the basic charges of complainant and intervenor against defendant are technically charges of undue discrimination, on which the parties have well briefed the Commission, in the opinion

of the Commission the practical matter to be decided herein is whether or not defendant's tariff Schedule A-18 should be opened to complainant and intervenor. In view of all of the evidence, the more important elements of which are above discussed, the Commission makes the following findings:

1. Defendant's tariff Schedule A-18 is a rate schedule presently applicable only for service to the three chemical plants of Hercules, Dow and Shell.

2. Said Schedule A-18 has, by formal finding of this Commission, been declared to be reasonable.

3. The chemical plants of Hercules, Dow and Shell constitute a class of service for rate purposes.

4. The chemical plants of California Ammonia and Valley Nitrogen are of the same class for which said Schedule A-18 is applicable.

5. California Ammonia and Valley Nitrogen are able, ready and willing to meet all of the terms and conditions of said Schedule A-18 and have applied to defendant for service thereunder.

6. Schedule A-18 should be modified so as to encompass service to the plants of California Ammonia and Valley Nitrogen.

7. Schedule A-18, as hereinafter modified, is fair and reasonable.

The Commission concludes that:

1. Defendant's tariff Schedule A-18, Interruptible Primary Industrial Power, should be modified as hereinafter ordered.

2. No reparations may be awarded herein.

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O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company is directed to file with this Commission, on or before May 27, 1964, and in accordance with the provisions of General Order No. 96-A, tariff Schedule A-18 revised so as (1) to include in the applicability clause thereof the chemical plant of California Ammonia Co. near Lathrop and the chemical plant of Valley Nitrogen Producers, Inc., near Helm and (2) to include in Special Condition(a) thereof a suitable clause whereby ten-year contracts will be required when service is first rendered under this schedule. Said revised schedule shall become effective, after not less than five days' notice to the public and to this Commission, for service rendered on and after June 1, 1964.

2. Pacific Gas and Electric Company shall, on the effective date of said revised Schedule A-18, render electric service to the aforesaid plants of California Ammonia Co., and Valley Nitrogen Producers, Inc., in accordance with the terms of said revised Schedule A-18 and at the rates therein set forth.

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

Dated at San Francisco, California, this 28th day of April, 1964.

President

Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.