

ORIGINAL

Decision No. 67511

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WEBERSTOWN CORPORATION, THE PERZY CORPORATION, THE SINNOTT CORPORATION, THE SUENDERMANN CORPORATION and WEBER ENTERPRISES, INC.,

Complainants,

v.

PACIFIC GAS AND ELECTRIC COMPANY,
Defendant.

Case No. 7712
(Filed September 10, 1963)

Gregg M. Anderson, for complainants.
Malcolm A. MacKillop, for defendant.
W. E. Waldrop, for the Commission staff.

O P I N I O N

The five complainants in this proceeding seek an order directing defendant to provide electric service to them for resale to their commercial tenants on a metered basis.

Testimony by witnesses for complainants and oral argument on defendant's motion to dismiss were heard before Examiner Catey at San Francisco on April 14, 1964. The matter was submitted on that date for a decision on defendant's motion to dismiss, with the understanding that defendant would be given an opportunity to present testimony at a further hearing if the motion were denied. Copies of the complaint, answer, motion to dismiss, reply to motion to dismiss, and notice of hearing were served in accordance with this Commission's rules of procedure.

Complainants and Defendant

The five complainants are corporations under the common ownership or control of a Mr. Charles M. Weber. Complainants own

property near the corner of Pacific Avenue and Yokut Avenue in the City of Stockton, San Joaquin County. They are constructing on this property the central portion of Weberstown Shopping Center. The central complex, to be known as Weberstown Mall, will cover approximately 235,000 square feet and will consist of a group of four buildings with a mall connecting them to department stores at the northern and southern ends of the complex. The entire structure will be under a single roof and will be surrounded by parking areas.

Defendant is a public utility providing gas, electric and water service to various areas in the northern part of California. It provides electric and natural gas service to extensive areas in the state, including the area wherein complainants' property is located.

Issues

Complainants applied for underground electric service from defendant to supply Weberstown Mall and the adjacent parking areas. Defendant refused to provide the service because complainants propose to resell the electricity to the future 30 to 40 tenants they expect upon full occupancy of Weberstown Mall. Defendant contends that such resale is prohibited by its filed tariffs.

Section (C) of defendant's Rule No. 18 provides:

"Resale of Electricity

A customer shall not furnish or resell electricity received from the utility to any person, except:

1. Where energy is purchased under rate schedules that specifically provide for resale service; or
2. Where the charge to tenants is absorbed in the rental for the premises or space occupied; or
3. Where the customer is the owner, lessee, or operator of an apartment house or other multi-family accommodation, and submeters and resells electricity to domestic tenants at the same rates and charges that the utility would charge for the service if supplied by it directly; or

4. Where the utility has been authorized or directed by the Public Utilities Commission of the State of California to provide service to a customer for resale on a metered basis; or
5. Where a customer is reselling energy on a metered basis to tenants for nondomestic purposes on May 15, 1962 at the same rates and charges that the utility would charge for the service if supplied by it directly and where such customer desires to continue such nondomestic resale. Unless otherwise ordered by the Public Utilities Commission of the State of California in an appropriate proceeding or requested by the customer, such nondomestic resale on a metered basis together with additions, rearrangements and changes to the service is permitted so long as the customer's premises, as defined by Decision No. 60938, are used by the customer or his successors in interest for the same general purpose."

Complainants seek an order directing defendant to provide resale service so they would qualify under Subsection (C)4 of the aforementioned Rule No. 18. The reason and basis for this request are summarized in the following paragraphs, together with statements of defendant's position and a discussion, where appropriate, of the relative merits of each party's contention.

Complainants seek the lower charges which would be payable to defendant by virtue of a single master service, stating that discount rates for quantity purchases are consistent with the practice of other businesses and industries. Defendant did not dispute this point but declined to commit itself as to whether the existence of five separate corporations, each owning an interest in specific portions of Weberstown Mall, would be used as a basis for refusal of a single service to them after the issue of resale has been settled. This is a fundamental question in this proceeding which must be answered before considering whether or not resale of electricity through the single service is appropriate.

Complainants state that, under Subsection (C)2 of Rule No. 18, they would be permitted to furnish electricity to their

tenants if the charge were absorbed in the rental of space occupied, but that such absorption without measurement of actual use may or may not be entirely fair to each tenant. Defendant points out that the desired fairness to each tenant could be achieved by having each tenant served by defendant directly, rather than indirectly through complainants' single utility service.

Complainants' engineering witness testified that the typical tenant would have a lighting installation but not a power requirement, although a tenant such as a restaurant would have a heating requirement for cooking purposes. Under these circumstances, it might be possible for complainants to estimate reasonably the amount of each prospective tenant's electric load and to establish rents which would absorb the cost of electricity, as permitted by defendant's Rule No. 18.

The engineering witness also testified that, if resale is permitted, complainants plan to meter all of the electricity, including that used by complainants for air conditioning and illumination of the covered mall and adjacent parking lots. He further demonstrated that the service organization which will maintain and operate complainants' facilities is capable of keeping the electric meters within acceptable standards of accuracy and that its cost of clerical work in rendering electric bills is almost negligible. Instead of permitting complainants to resell electricity at defendant's rates, thus permitting a profit to complainants and placing them in a utility status, it appears more reasonable to permit them to meter all usage for the sole purpose of prorating equitably, in proportion to actual usage, the periodic electric bills payable to defendant. This will meet complainants' objective of fair treatment to all tenants.

Complainants charge that the distinction between domestic and commercial resale established by Subsection (C)3 of Rule No. 18 constitutes an unreasonable difference as to rates and service between classes of service and is barred by Section 453 of the Public Utilities Code. As defendant states in its motion to dismiss, the Commission specifically found in P.G. & E. Co. (1962), 59 Cal. P.U.C. 547, that this distinction is not unreasonably discriminatory. The record in the current proceeding does not justify reversal of the previous finding.

Complainants state that their contribution to defendant of the extra cost of an underground service as compared with the cost of an equivalent overhead service, without opportunity to recover this investment through resale of electricity, is a subsidy to defendant, constituting an unreasonable difference as to rates, charges, service, and facilities, prohibited by Section 453 of the Public Utilities Code. Defendant reiterated its several arguments presented in the 1962 proceeding, which arguments were persuasive in establishing defendant's present Rule No. 18 and need no further discussion. Of equal importance is the fact made amply clear in this record that the underground service was requested for functional and aesthetic reasons and that the functional and aesthetic advantages accrue to each tenant, irrespective of the extent of use of electricity. Further, the contribution of the extra cost of underground service prevents subsidy of this more expensive installation by the many existing and future overhead service customers who are charged for electricity at the same rates paid by customers with underground services. The contributions do not subsidize defendant because this Commission deducts the contributions from rate base in rate proceedings.

Findings and Conclusions

The Commission finds that:

1. Complainants should reasonably be considered collectively as a single customer in their request for a single electric service for Weberstown Mall.

2. It is reasonable for complainants to prorate their periodic electric bills to all users at Weberstown Mall, including themselves, in proportion to actual usage as determined by meters.

3. Complainants should not be permitted to purchase electricity from defendant and to resell it at defendant's rates.

The Commission concludes that defendant should be directed to permit a deviation from its filed Rule No. 18 to the extent set forth in the ensuing order.

O R D E R

IT IS ORDERED that:

1. Defendant Pacific Gas and Electric Company shall, upon application by complainants Weberstown Corporation, The Perzy Corporation, The Sinnott Corporation, The Suendermann Corporation and Weber Enterprises, Inc., or any combination of said complainants, provide a single electric service for Weberstown Mall and adjacent parking areas, in Stockton, San Joaquin County.

2. Defendant shall permit a deviation from its Rule No. 18 by complainants to the extent that they may prorate their periodic electric bills to all users at Weberstown Mall, including themselves, in proportion to actual usage as determined by meters.

3. In all other respects, defendant's motion to dismiss this complaint is granted.

The effective date of this order shall be twenty days after the date hereof unless before such effective date defendant shall have filed in this proceeding a written request for further hearing, in which event the effective date of this order shall be stayed until further order of this Commission.

Dated at San Francisco, California, this 14th day of July, 1964.

Fredrick B. Hallock
President
Robert S. [unclear]
George T. Hoover
William L. [unclear]
Commissioners

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