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Decision No. 85226

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA PORTLAND CEMENT COMPANY,)
Complainant,)
vs.)
PACIFIC GAS AND ELECTRIC COMPANY,)
Defendant.)

Case No. 9927
(Filed June 5, 1975;
amended June 16, 1975
and August 29, 1975)

J. R. Elliott, Attorney at Law, for California
Portland Cement Company, complainant.
Kermit R. Kubitz, Attorney at Law, for Pacific
Gas and Electric Company, defendant.

O P I N I O N

Nature of Complaint

This complaint, by California Portland Cement Company (CPC), was filed on June 5, 1975 and amended for the first time on June 16, 1975. Pacific Gas and Electric Company (PG&E), the defendant, filed its answer on June 27, 1975, and CPC filed a second amendment on August 29, 1975.

In the original complaint, CPC protested the minimum charges collected by PG&E pursuant to its Gas Department Tariff Schedule No. G-56, Interruptible Natural Gas Service. Under Schedule No. G-56, PG&E was collecting a minimum charge for interruptible gas service to CPC Mojave cement plant equivalent to the charge for 2,000,000 therms per month despite the fact that PG&E was unable to deliver this amount during the winter months. CPC deposited its check for \$94,312.25 with the Commission, which amount CPC claimed was payment for gas for which it was able to take, but had not received.

The minimum charge is accumulative annually, and as CPC's consumption increased above the minimum, it filed the two amendments to its complaint, the first reducing the amount claimed and the second asking that all of the deposits, except for \$1,028.84, be paid over to PG&E.

A public hearing on the complaint was held before Examiner Boneysteele on October 9, 1975 at San Francisco. At the hearing, counsel for CPC stated that, since the minimum charge under Schedule No. G-56 has been reduced from 2,000,000 therms to 5,000, and also since CPC no longer intends to take gas under Schedule No. G-56, the only remaining issue was PG&E's method of calculating charges at the times a rate increase became effective.

Complainant's Showing

CPC presented one witness, the plant manager of its Mojave plant, Herman Alford. Mr. Alford testified that the gas taken for interruptible service at the Mojave plant was measured by a recording orifice meter. The charts from the meter, showing pressure and flow rate of gas delivered over a 24-hour period, are changed each morning at 7:00 a.m. by CPC's plant statistician. The statistician, using the data recorded on the chart, calculates the volume of gas delivered to CPC during the previous 24-hour period and mails the chart to PG&E's Fresno office. PG&E then independently calculates the gas consumed and provides CPC with a monthly summary of gas usage figures as computed from the daily charts. The figures generally coincide with those calculated by the plant statistician.

The \$1,023.84 remaining in dispute results from two gas rate increases that became effective in the December billing period. On December 2, 1974, the rate was increased from 6.904¢ to 6.981¢ per therm. On January 1, 1975, the rate was further increased to 8.767¢ per therm. PG&E billed CPC \$125,694.14 for 1,785,780 therms of heating value of gas delivered as measured between 7:00 a.m., December 1, 1974, and 7:00 a.m., January 1, 1975. Deliveries to the Mojave plant had been interrupted at the end of December, however, and no gas was consumed from December 28 through December 31, inclusive.

According to the detail of bill furnished by PG&E to CPC, the \$125,694.14 was determined by applying the fraction 30/31 to the December usage priced at the 6.981¢ rate and 1/31 to usage priced at the 8.767¢ rate. CPC was thus billed for one day's usage at the 8.767¢ rate, even though it took no interruptible gas on December 31. CPC also received no benefit for the 6.904¢ rate that was in effect on December 1, 1974.

Mr. Alford presented two billing calculations. The first calculation, obtained by dividing by 31 the difference between bills for the entire 31-day period determined at the 6.981¢ rate and then at the 8.767¢ rate, indicated that CPC had been overcharged by \$1,028.84, the amount of overpayment claimed in the complaint. Mr. Alford's second calculation involved proration of the actual hours the 6.981¢ rate was in effect on December 1 and gave no consideration to the period between midnight and 7:00 a.m. on January 1 since the interruptible gas deliveries to the plant were curtailed at this time. This second calculation indicated that CPC had been overcharged by an amount of \$1,073.80.

Defendant's Showing

In its answer, PG&E denied that it was not entitled to the disputed \$1,028.84. PG&E alleged that its method of prorating rate increases which occur during a monthly billing period on the basis of average daily deliveries is the only reasonable way to allocate such increases to its approximately 2.5 million gas customers. The alternative method would be to read 2.5 million meters simultaneously on the day that the increased rate goes into effect in order to apply the new rate to actual usage beginning on that date. Although CPC and other large industrial customers served under interruptible schedules have recording meters, these customers constitute a negligible fraction of PG&E's total number of customers and only a fraction of its interruptible customers. PG&E claims that its method of prorating rate increases provides uniform treatment for all of its customers. PG&E also claims that if curtailment had occurred on the days of the monthly billing period prior to the rate increase, CPC would have benefited by PG&E's billing method. Finally, PG&E stated that its rate schedules are based on monthly usage of natural gas, not upon daily usage.

In support of its contentions, PG&E presented its supervisor of consumer services, John T. Crews. Mr. Crews testified that PG&E presently employs 630 meter readers who work 21 days per month. Should PG&E attempt to read all of its meters on the effective date of a rate change, it would require 21 times the present meter reading staff, or 12,600 additional meter readers. PG&E would have to employ temporary help or else divert employees from other duties.

According to Mr. Crews, 427 of PG&E's customers have recording meters. He showed that, depending on the timing of a rate change, bills based on actual recorded consumption taken from recording meters could be either greater or less than prorated bills. If the method proposed by CPC resulted in bills higher than PG&E's method, a large user might argue that the CPC method constituted discrimination and insist that his bill be calculated in the same manner as the vast majority of PG&E's customers.

Discussion

The tariff schedule promulgating the 6.981¢ rate (Revised Cal. P.U.C. Sheet No. 9344-G) became effective at the instant that the big hand of the clock passed the little hand at midnight on December 2, 1974.^{1/} Similarly the 8.761¢ rate became effective amid the horns ushering the new year into the Pacific time zone.

Section 532 of the Public Utilities Code states, in part:

"Except as in this article otherwise provided, no public utility shall charge, or receive a different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals, and charges applicable thereto as specified in its schedules on file and in effect at the time, ... The Commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility."

No exception, as contemplated by Section No. 532, has been granted to PG&E. PG&E must therefore, apply its tariffs on file and in effect. In construing Section No. 532, we should give the statute a fair and reasonable interpretation, with due regard to the language used and the purpose sought to be accomplished.

^{1/} Government Code Section 6806: "A day is the period of time between any midnight and the midnight following."

A construction that will lead to a conclusion not contemplated by the Legislature, occasion great inconvenience, or lead to absurd and unfair consequences, is to be avoided.^{2/} It would be absurd to expect PG&E to read each of its 2.5 million gas meters precisely at midnight of the day of a rate change, and it certainly would occasion great inconvenience to PG&E to require it to read all 2.5 million on the day of a rate change, particularly when that day should be a holiday, such as January 1. With recording meters, however, exact consumption up to the moment of a rate change can readily be determined from the meter chart. Applying the rules of statutory construction to Section 532, it would seem that using actual recorded consumption, before and after a rate change, for the purpose of computing bills for 427 or so customers having recording meters would not be absurd or greatly inconvenient and would lead to a conclusion contemplated by the Legislature, namely, that to the extent reasonably possible, rates on file and in effect be charged.

We do not accept PG&E's contention that using the best data available would be discriminatory to those customers not having recording meters. To the contrary, the present method of billing interruptible customers at a new rate for gas not actually consumed could be considered discriminatory compared to the billing of the vast majority of PG&E's firm service customers who are, at the present time at least, assured of deliveries at the new rate.

Accordingly we find that bills rendered to those PG&E's gas customers who are served through recording meters should be computed using the rates on file and in effect at the time of the actual delivery of the gas, and order PG&E to compute its gas bills in this fashion in the future. Based on this finding we conclude that the \$1,028.84 deposited with the Commission should be returned to CPC and so direct our secretary.

2/ 45 Cal Jur 2d, Section 113.

Finding

Bills rendered to PG&E's gas customers who are served through recording meters should be computed using the rates on file and in effect at the time of the actual delivery of the gas.

Conclusion

The Secretary of the Commission should be directed to return the \$1,023.84 now on deposit with the Commission to CPC.

O R D E R

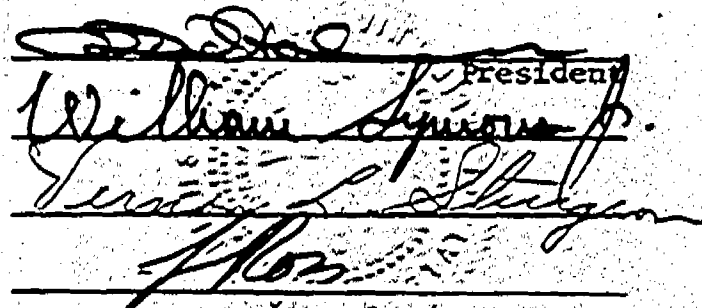
IT IS ORDERED that:

1. Pacific Gas and Electric Company shall compute bills rendered to gas customers who are served through recording meters using the rates on file and in effect at the time of the actual delivery of the gas.

2. The Secretary of the Commission is directed to return the \$1,028.84 now on deposit with the Commission to California Portland Cement Company.

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

Dated at San Francisco, California, this 9th day of DECEMBER, 1975.



President

Commissioners

Commissioner Robert Batimovich, being necessarily absent, did not participate in the disposition of this proceeding.