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Decision No. 86491

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Utah International Inc., a corporation, Complainant, v. Pacific Gas and Electric Company, a corporation, Defendant.	Case No. 10096 (Filed May 3, 1976)

Lawrence D. Becker, Attorney at Law, for Utah International Inc., complainant.
Kathy Graham, Attorney at Law, for Pacific Gas and Electric Company, defendant.

O P I N I O N

Complainant is the subdivider of Diamond Oaks, Units 1 and 2 in Roseville. It paid Pacific Gas and Electric Company (PG&E) a full cost advance for construction of a gas extension to each unit. PG&E completed the extensions on September 6, 1966. All of the houses in both units are now completed but some are still unsold and unoccupied as of September 6, 1976.

As required by its tariff, PG&E refunded part of the extension advance as each house was sold. Complainant alleges that PG&E will not pay a refund for any house remaining unsold after September 6, 1976. The refund is calculated by a tariff formula which multiplies a specified construction cost, $1.80 per foot,[1/] by a footage allowance based on the number and Btu rating of gas appliances installed. For example, a house with a gas water heater has a footage

1/ The applicable construction cost is that specified in the tariff in effect at the time of construction.

allowance of 80 feet. A 90,000 Btu space heater would justify an additional footage allowance of 47 feet. Each house in the subdivision is equipped with both a water heater and a space heater in the range of 90,000 Btu.

Complainant contends that PG&E's refusal to pay any further refunds on unsold homes is in violation of its tariff; it seeks an order requiring payment on all the remaining homes.

PG&E's tariff for gas extensions (Rule 15) provides in Section C.2:

> "The amount advanced in accordance with Sections C-1 hereof will be subject to refund as follows:
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> a. Refunds of an advance will be predicated on connections of separately metered permanent general or firm service load and/or customers; will be made without interest; and will be made within ninety days after date of first service to such load and/or customer, except that refunds may be cumulated to $25.00 minimum or the total refundable balance if less than $25.00 before each refunding.
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> f. No payment will be made by the utility in excess of the amount advanced by the applicant or applicants nor after a period of ten years from the date the utility is first ready to render service from the extension, and any unrefunded amount remaining at the end of the ten-year period will become the property of the utility."

As complainant interprets these provisions, it is entitled to a refund if the residence is complete and the gas service and meter installed within ten years after the extension is completed. It reaches this conclusion by emphasizing the words "...separately metered permanent..." in 15.C.2.a.

PG&E answered and moved to dismiss. Its answer admitted that its employees have told complainant that no refunds are due unless

the homes are sold by September 6, 1976. Its motion to dismiss argued that it has no duty to make refunds when a meter and appliances are installed and that the refund obligation arises only when service is supplied to a permanent customer.

Hearing on the motion to dismiss was held before Examiner Gilman on August 23, 1976 in San Francisco. At the close of argument the motion was taken under submission.

Discussion

Complainant's interpretation of the tariff is inconsistent with the purpose underlying the refund provisions. That purpose is to ensure that the utility is reimbursed for the total cost of an extension, unless revenue service commences within a reasonable time.

If complainant's interpretation were adopted, there could be a delay of months, perhaps years, between the time when a refund is paid and the time when revenue service commences. During any such delay, PG&E's other customers, rather than the subdivider, would ultimately bear the costs of ownership of the unused plant. Complainant's interpretation will therefore be rejected. Since the interpretation issue is the only one raised by the complaint, the motion to dismiss should be granted.

Complainant raised an additional issue for the first time during oral argument. It alleged that PG&E presently receives some revenue from the unsold houses, since space heaters are operated while the houses are being shown to prospective customers. Complainant has, however, conceded that the revenue thus generated is far less than if the houses were used as residences. Complainant, for example, burns no gas in the water heater which would provide at least half of the footage allowance for each house. Complainant has not contended that a partial refund would be required when the use of one of the installed appliances commences. Such casual use is not the "permanent general on firm service load" required by Rule 15.C.2.

We conclude that under its gas tariff Rule 15.C.2.a, PG&E is not required to refund a gas extension advance to a subdivider when a home is complete and meters and gas appliances are installed and functional. The obligation accrues only when there is service to a separately metered, permanent residential customer, or another use producing revenue which is comparable in value and permanence. If the obligation does not accrue within ten years after the extension is completed it is extinguished.

O R D E R

IT IS ORDERED that this complaint is dismissed.

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

Dated at San Francisco, California, this 13th day of OCTOBER, 1976.

President

Commissioners