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Decision 84 04 006 APR 4 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MADERA PROCESSING CORPORATION, a corporation, PISTACHIO PRODUCERS OF CALIFORNIA, a corporation, ROLAND L. EWELL, LAWRENCE R. KNOWLES, DONALD L. HOWARD, JAMES R. MAXWELL, and WESLEY B. BENNETT, dba PARTNERS II, Complainants, vs. PACIFIC GAS & ELECTRIC COMPANY, a corporation, Defendant.	Case 83-06-01 (Filed June 2, 1983; amended October 13, 1983)

Steven D. McGee and Jeffrey G. Boswell, Attorneys at Law, for complainants.
A. Kirk McKenzie and Peter W. Hanschen, Attorneys at Law, for defendant.
Mary F. McKenzie, Attorney at Law, and John L. Dutcher, for the Commission staff.

O P I N I O N

Complainants Madera Processing Corporation (MPC), Pistachio Producers of California (PPC), a corporation, Roland L. Ewell, Lawrence R. Knowles, Donald L. Howard, James R. Maxwell, and Wesley E. Bennett, dba Partners II (Partners), allege as follows:

1. Within the past two years Partners sold to PPC and MPC certain property located in Madera County for the operation of a pistachio drying facility. The agreement of sale called for Partners to pay for the net cost of the installation of a gas main extension required for the pistachio drying facility on the subject property, less any credits, rebates, refunds, or rate reductions resulting from actual usage of the gas.

2. Following the sale between PPC and MPC and Partners, on July 15, 1982 Pacific Gas and Electric Company (PG&E) entered into separate agreements with PPC and MPC for the installation of a gas main extension and service in Reference No. GM 4298352. Included in each of the agreements was PG&E's calculation of the estimated total cost of installation of the main extension, the estimated annual revenue to be derived from the gas usage by PPC and MPC, and the advance required to be paid by PPC and MPC. 1/ In the PPC agreement, PG&E calculated the estimated total cost of installation to be $63,154.03 with estimated annual revenue to be derived from PPC of $10,950.66 with an advance of $52,203.37 to be paid by PPC. 2/ The MPC agreement estimated the total cost of installation to be $44,206.97 with estimated annual

1/ The amount required to be advanced by the customer is the amount by which the estimated total cost exceeds the estimated annual revenue.

2/ Estimated annual revenue of $10,950.66 was arrived at by multiplying the estimated monthly gas usage of 84,000 therms by 1.5 months and multiplying the resultant by $0.08691 per therm (tariff rate less the cost of purchased gas).

revenue of $7,665.46 to be derived by PG&E from MPC with an advance of $36,541.51 required from MPC. 3/ Complainants allege the $0.08691 per therm figure in the agreements differed substantially from the 27¢ per therm previously estimated by PG&E and relied upon by complainants.

3. PG&E has been paid a total of $88,744.88 by PPC and MPC for the gas main extension and has taken the position that only approximately one-fifth of that amount is to be rebated to complainants based on PG&E's interpretation of its tariff Rule 15.D(2). Complainants allege PG&E's interpretation of Rule 15.D(2) is in error.

4. PG&E's use of $0.08691 per therm as reflected in the agreements between PG&E and PPC and MPC is in error. Under paragraph 3 of those agreements, PPC and MPC were to pay for gas service at the rates and charges as set forth in PG&E's gas rate tariff Schedule No. G-2 (Non-residential Natural Gas Service). According to Schedule No. G-2, the correct per therm charge should have been $0.55600 per therm. With the correct $0.55600 figure applied to the agreements at issue, the amount owed to complainants as a rebate is as follows:

PPC:	84,000 therms at $0.55600 x 1½ months =	$ 70,056
MPC:	58,800 therms at $0.55600 x 1½ months =	48,373 a/
	Total	$118,428 b/

a/ The correct figure should be $49,039.
b/ The correct figure should be $119,095.

3/ Estimated revenue of $7,665.46 was arrived at by multiplying the estimated monthly gas usage of 58,800 therms by 1.5 months (annual use) times $0.08691 per therm.

5. Since the total revenue credit should have been $118,428, if PG&E had interpreted its Rule 15.D(2) correctly, there should not have been an advance required as the total cost of installation of the gas main extension ($107,361) was less than the revenue credit that complainants were entitled to. Therefore, the $88,744 advance paid to PG&E by PPC and MPC was not required.

6. PG&E has incorrectly interpreted its Rule 15.D(2) as applying to estimated net annual revenue, which it calculated as gross revenue minus the cost of gas. Complainants assert the correct interpretation of Rule 15.D(2) is that "estimated annual revenue" is equal to gross revenue from the sale of gas supplied to customers by PG&E.

7. PG&E has wrongly refused to respond to complainants' request for refund and complainants pray for an order that PG&E's interpretation of its Rule 15. D(2) be determined as error as applied to the agreements at issue between the parties and that complainants be awarded a refund of $88,744, plus interest, under the correct interpretation of Rule 15.D(2).

In its answer to the complaint, PG&E admits it entered into separate agreements with PPC and MPC, and Exhibits A and B to the complaint are unsigned copies of said agreements which are true and correct except that on the original of the agreement with PPC, the revenue credit shown on Exhibit B was $10,950.66 rather than $7,300.44 and was calculated on a usage assumption of 84,000 therms times 1.5 months times $0.08691 per therm. PG&E admits the agreements it entered into with PPC and MPC on July 15, 1982 contained calculations of estimated annual revenue, to be received from PPC and MPC as set forth in Exhibit B to each of said agreements. PG&E further admits the estimated annual revenues set forth in the agreement with MPC was calculated assuming a usage of 58,800 therms per month for a period of one and one-half months at a cost of $0.08691 per therm. PG&E further admits it interprets the term "estimated annual revenue" as used in its tariff Rule 15.D(2) to mean the net revenue received by PG&E from a customer after deducting the cost of purchased gas. PG&E alleges this interpretation is reasonable and has been repeatedly accepted by the Commission staff.

PG&E admits PPC and MPC together have paid PG&E a total advance of $88,744.88, which was calculated by subtracting from the estimated total cost of installing facilities to serve PPC and MPC ($107,361) the sum of the estimated annual net revenues to be received from PPC and MPC ($18,616.12). PG&E further admits paragraph 3 in each of the July 15, 1982 agreements provides, among other things, that "Applicant shall pay for gas service, at the rates and charges applicable thereto, and as initially set forth in PGandE's presently effective Gas Rate Schedule No. G-2. ..." PG&E also admits that in computing the estimated annual revenue shown in said agreements, it used the cost of $0.08691 per therm and denies that the use of this figure was erroneous, or that it was obliged to use the rate of $0.55600 shown in Schedule No. G-2 for the purpose of calculating the estimated revenues which would be used as a credit. Except as admitted above, PG&E generally denies each of the remaining allegations contained in the complaint.

As a first affirmative defense, PG&E alleges that Roland L. Ewell, Lawrence R. Knowles, Donald L. Howard, James R. Maxwell, Wesley E. Bennett, and Partners are not proper parties to this proceeding because none of them is a party to either the July 15, 1982 agreement between PG&E and PPC or the July 15, 1982 agreement between PG&E and MPC. As its second affirmative defense, PG&E alleges its dealings with PPC and MPC have at all times complied with the terms of its tariffs on file with the Commission and because PG&E has acted lawfully with the terms of said tariffs, complainants are not entitled to any relief. PG&E prays the complaint be dismissed and no relief be granted to complainants.

Following notice, a public hearing was held in the matter on October 13, 1983 in Fresno before Administrative Law Judge William A. Turkish.

Testifying for complainants were Charles A. Belotte, James R. Maxwell, Roland L. Ewell, and Donald DeLong. Testifying on behalf of PG&E was Samuel D. Wells. Testifying on behalf of the Commission staff was John L. Dutcher.

Upon motion made by PG&E, and granted, Roland L. Ewell, Lawrence R. Knowles, Donald L. Howard, James R. Maxwell, and Wesley E. Bennett, dba Partners II, were struck from the complaint and First Amended Complaint as complainants in this matter.

Testimony by witnesses on behalf of PPC and MPC is summarized below.

In late December 1980, several times in 1981, and on January 27, 1982, meetings were held between Charles A. Belotte, a senior consultant for Pacific Agricultural Services (PAS), and Roy Price, of PG&E, concerning agreements for a gas main extension

to serve the intended pistachio processing facility of PPC and MPC and the nature of the credit which would offset the cost of the installation of the gas to the proposed plant sites. At one or more of these meetings, Price informed Belotte that the applicant for a gas main extension would be required to make a deposit at the time of the request for services.
Price stated to Belotte that the amount of deposit would be the cost of the installation of the gas main extension minus a credit based upon the estimated first year annual gas consumption. Price stated that based upon the estimate of gas usage provided by PPC and MPC, the net deposit would be only several thousand dollars. In inquiring how the calculation to determine the credit allowance would be made, Belotte was told by Price that it was based upon a per therm cost factor, given the applicable rate schedule, times the number of therms the applicant estimated using during the first year of consumption. The applicable cost factor to determine the credit was initially stated as being 27¢ per therm in 1980 or 1981; but at the meeting on January 27, 1982, due to rate increases, Price quoted the credit to be about 49.5¢ per therm.

Between April 20 and 30, 1982, Partners sold parcels of real property to PPC and MPC for the construction of a pistachio drying facility on said parcels which needed to be in operation by September 1, 1982 to process the 1982 pistachio crop. By terms of the agreement of purchase and sale Partners promised that upon execution of a use contract by PPC and MPC with PG&E, it would "pay the net cost (gross cost of installation less any credits, rebates, refunds, or rate reductions resulting from actual usage) of extending the natural gas line to the edge of the property."

On or about July 12, 1982, Price delivered two service agreements to PAS for the gas main extension to serve PPC and MPC. Each agreement calculated the estimated annual revenue based on a factor of $0.08691 per therm, which was substantially lower than the $0.495 per therm cost originally quoted in January 1982 by Price. Price informed Belotte that the deposit (advance) for the gas main installation was required to be in PG&E's Madera office the next day or else PG&E would not be able to install the gas line to the plant in time for the processing of the 1982 pistachio crop.

The $88,744.88 advance was paid the following day by PAS in the form of two checks drawn on trust accounts established by PPC and MPC. These payments were made under protest and under extreme economic pressure because of the need to meet the installation deadline for processing the pistachio crop.

In an attempt to resolve the dispute, witness Belotte contacted the Commission's Legal Division about PG&E's interpretation of "estimated annual revenue" as meaning net annual revenue. Belotte thereafter received a letter from a staff attorney stating it was staff's opinion that Belotte was correct in interpreting "estimated annual revenue" to mean a gross figure (then 55.6¢ per therm) and not the net figure of $0.08691 per therm used by PG&E. The staff attorney concluded that computation for the PPC credit should be 84,000 therms multiplied by 1.5 months multiplied by 0.55600 per therm based on Schedule No. G-2 and totaling $70,056.

In discussions between witness Ewell and PG&E's marketing supervisor in Merced, the definition of "annual revenue" as used in the PPC and MPC agreements was discussed. PG&E's representative stated that PG&E would be willing to abide by the definition of "annual revenue" or an official interpretation as supplied by the Commission and that PG&E would consider itself legally bound by it. PG&E has refused to abide by the statement of its representative and has refused to abide by the opinion of the Commission's Legal Division staff member that "annual revenue" means "gross annual revenue".

Below is a summary of the testimony presented by the single witness for PG&E.

PG&E, which previously used the "gross annual revenue" method in determining the credit to be allowed an applicant for gas main extensions, began to use the "net revenue" method in 1978. This change in interpretation of the tariff language occurred because in the late 1970s the cost of gas purchased by PG&E from its suppliers began to escalate sharply. In January 1977 the cost of purchased gas relative to the system average rate was 68.7%; between January 1, 1978 and January 1, 1983 the percentage of the cost of purchased gas in relation to the system average rate fluctuated between 69.8% and 80.1%. It was because of the rapid escalation in the cost of purchased gas that PG&E determined that an unfair economic burden would be imposed on PG&E's existing gas customers if the revenue credit provided for in Rule 15.D. continued to be based on estimated gross revenue rather than estimated net revenue. The issue was perceived as an equitable one. Simply put, it seemed that there was no justification for requiring existing high priority gas customers to absorb the increased cost of serving new customers simply because the cost of wholesale gas (which comprises about 75% of PG&E's system average gas rate) had risen.

In 1979 PG&E attempted to modify Rule 15.D. by an advice letter filing to make it explicit that net revenues rather than gross revenues would be the basis for computing the revenue credit under Rule 15.D. However, the Commission staff refused to accept such an advice letter filing while Case (C.) 10260 (general reexamination by the Commission of gas and electric line extension rules) was still pending, since Rule 15.D. was an issue in that proceeding. C.10260 is still pending. The Commission has issued at least three decisions on the merits since C.10260 began in 1977 (D.91328, D.82-04-068, and D.82-12-094), but the implementation of them has been postponed several times because of the pendency in the State Legislature of Senate Bill 48, which was recently enacted.4/

4/ The essence of the new rules addressed by Senate Bill 48, which added Section 783 to the Public Utilities (PU) Code, is that new customers would pay a far greater portion of the cost of the extension of gas and electric facilities than under previous rules and that the new rules should not be placed into effect until the Public Utilities Commission has completed a study of the impact of the proposed new rules on new and existing ratepayers due to the impact that the new rules will have on a broad segment of California's economy.

On October 22, 1980 the Commission issued Resolution G-2380 which approved two PG&E special gas main extension contracts necessary to supply gas to a project involving Danna & Danna, Inc. and James Bocardo, in Yuba County. The amount of the advance the applicants were required to pay PG&E was based upon the annual net revenue the company expected.

The testimony of the Commission staff witness is summarized below.

Table 1 of Exhibit 5 compares the amounts gas utilities in California would require three hypothetical applicants for service to advance under similar conditions and the staff computation of the advance amount that would be required of a PG&E customer if PG&E applied its rule in the same way as other gas utilities. The significant difference as shown in the table is that PG&E would require an advance of $116,727 while the advance required if PG&E used the same method as the other utilities would be $76,768, a difference of $39,959. The "rate" indicated in column A of Table 1 is derived by a formula at the bottom of the table using the base cost of gas divided by the first year therm sales to derive the net revenue. The "base cost of gas" used to derive the "rate" is only a component of PG&E's revenue. In very approximate terms, base cost of gas plus cost of purchased gas and franchise and uncollectible expense equal PG&E's revenue requirements. By itself, base cost of gas represents only one-fifth of revenues.

Table 2 of Exhibit 5 is the same as Table 1, except that the average unit cost per foot to install a gas main is each utility's individual tariff rule cost. Also, the free footage allowance is computed based on tariff provisions of one and one-half times the estimated annual revenue for all utilities except PG&E, where the one year revenue tariff condition applies. In the review and development of Tables 1 and 2, staff has determined that PG&E has been understating the estimated annual revenue for use in determining the free footage allowance. This understatement would reduce the free footage allowance and thereby allow the collection of increased advances. PG&E's use of "net revenue" began sometime in 1978 and prior to PG&E's change in method, it used the same method of computing revenues as the other utilities, i.e. "gross estimated annual revenue".

The interpretation of the phrase "estimated annual revenue as determined by the utility" currently used by PG&E distorts the concept of revenue. Staff believes revenue should be defined as follows:

> "Revenue results from the sale of goods and the rendering of services and is measured by the charge made to customers, clients, or tenants for goods and services furnished to them. . . ."

PG&E's electric extension Rule 15.2c.1.d. defines "revenue" as "recorded revenue from sales to customers..." Staff sees no reason for a different definition in the gas extension rule.

PG&E did not receive Commission authorization to change its method of computation of the "estimated annual revenue" from a gross revenue to a net revenue in 1978.

Other major utilities in California continue to use "gross annual revenue" to determine the free footage allowance for gas main extensions.

Discussion

Although several issues have been raised in this proceeding, the primary issue concerns the interpretation of PG&E's tariff Rule 15.D.[5/] and resolution of this issue makes it unnecessary to discuss the remaining issues.

The dispute centers on the meaning of "estimated annual revenue" as found in item (2) of Rule 15.D. Complainants and the Commission's Utilities Division staff contend that "estimated annual revenue" is the product of the rate times estimated usage. This "estimated annual revenue" then becomes the basis for the free footage allowance which a customer receives. If this amount exceeds the cost of the main extension, then the customer does not pay any advance to the utility. In other words, the free footage allowance represents a credit against the cost of the gas main extension. PG&E argues that, on its face, the term "estimated annual revenue" is ambiguous and can reasonably be interpreted to mean either "gross" or "net" revenue. PG&E admits the general rule in language construction is that ambiguous language in a tariff

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5/ Rule 15.D. provides, in pertinent part:

> "Extensions of distribution mains and/or enlargements of existing distribution main capacities to furnish service other than Priority P1 service will be installed, owned, and maintained by the Utility provided: (1) in the Utility's opinion, adequate supplies of gas are, and will continue to be available for Priority P1 service, and (2) the cost of such extension and/or enlargement does not exceed one times the estimated annual revenue as determined by the Utility. Any additional extension and/or enlargement required will be installed, owned, and maintained by the Utility provided the applicant pays to the Utility an amount of money equal to the estimated cost of that portion of such extension or enlargement necessary to supply the applicant's load in excess of that installed at the Utility's expense. . . ."

(like ambiguous language in a contract) should be construed against the party who drafted it, but then contends the rule does not apply in this case because the Commission staff refused to support PG&E's efforts to amend Rule 15.D. in 1979 to make it clear that net revenue rather than gross revenue would be used in estimating Rule 15.D. credit allowances. PG&E therefore contends the Commission should apply the well-established rule that where ambiguous language in a contract is the result of a legal obligation imposed upon the drafting party, the ambiguity should not be construed against that party. We reject such argument. Although PG&E approached the staff informally in 1979 to discuss the filing of an advice letter to modify Rule 15.D. and was advised that because revision of Rule 15 was pending in C.10260 PG&E should wait until the case was decided, staff's advice does not constitute a legal obligation imposed upon PG&E by the Commission. The comments made or advice given by Commission staff members in informal discussions do not constitute official Commission action. The fact that PG&E did not go ahead and make the advice letter filing because of the Commission staff member's advice cannot be used by PG&E as an estoppel against the Commission in the proper performance of its authority. PG&E was under no legal prohibition from filing the advice letter despite the advice it received from staff members.

Testimony by PG&E's witness suggesting that the Commission has previously approved use of the "net revenue" method in connection with Rule 15.D. is misleading and not entirely accurate. We have in the past approved, upon a filing by PG&E and on an individual basis, special contracts where the advance required of the customer was calculated on the basis of a "net annual revenue" figure. However, the resolutions approving such contracts specifically acknowledge that the terms deviated from the filed tariff. PG&E, had it wanted to, could also have submitted the PPC and MPC contracts to the Commission for approval, but it did not do so.

Prior to 1978, PG&E along with other California gas utilities, interpreted the phrase "estimated annual revenue" in a tariff to mean the total amount of money the utility expects to receive from a main extension applicant from the sale of gas during a one-year period. In 1978, even prior to PG&E's approach to the Commission staff, PG&E unilaterally changed its interpretation of "estimated annual revenue" from "gross annual revenue" to "net annual revenue" (total revenue less the cost of purchased gas). In this case, the change to a "net annual revenue" meant that a lower per therm figure of $0.08691 (tariff rate less cost of purchased gas) rather than the tariff rate of $0.55600 per therm was used as the cost factor in determining the free footage allowance. PG&E's calculation of the PPC free footage allowance, using the lower rate (net revenue), results in a credit of $10,950.66. MPC's free footage allowance (also using the lower net revenue rate) resulted in a credit of $7,665.46. The combined credit for both PPC and MPC was calculated at $18,616.12 while the total combined cost of the gas main extension was $107,361. Had PG&E used the "gross annual revenue" method instead of the "net annual revenue" method, as it had done prior to 1978, and used the figure of $0.55600 per therm as contained in its Schedule No. G-2, PPC and MPC would have received a combined credit totaling $119,095.

Since this amount exceeds the total cost of the gas main installation of $107,361, there would have been no requirement for PPC and MPC to pay the $88,744.88 advance demanded by PG&E and paid by PPC and MPC on July 13, 1983.

We agree with complainants and staff that the term "estimated annual revenue" in Rule 15.D(2) means the total amount of money PG&E expects to receive from a main extension applicant from the sale of gas during a one-year period. The tariff provisions of other major gas utilities in California relating to gas main extension allowance credits read substantially the same as PG&E's Rule 15.D(2). Those utilities interpret "estimated annual revenue" to mean "gross annual revenue". PG&E is now the only utility in California that is using a different interpretation of this particular tariff term. We conclude that its former interpretation was the correct one and its change of such interpretation in 1978 constitutes a unilateral tariff change without Commission approval. PG&E's electric extension Rule 15.2c.1.d. defines "revenue" as "recorded revenue from sales to customers..." We see no reason why PG&E should have a different definition of "revenue" in its gas extension rule. For the purpose of this proceeding, revenue should be defined as follows:

> "Revenue results from the sale of goods and the rendering of services and is measured by the charge made to customers, clients, or tenants for goods and services furnished to them. . . ." 6/

6/ From "The Lawyer's Use of Financial Statements" by Irving Kellogg, copyright 1967 by the Regents of the University of California. California Practice Book No. 34, California Continuing Education of the Bar, referring to Accounting Research Study No. 7 at 428 (1965).

Finally, we point out to PG&E that paragraph 3 of the PPC and MPC agreements calls for applicants to pay for gas service at the rates and charges as set forth in PG&E's gas rate Schedule No. G-2. Schedule No. G-2 at that time had a rate of $0.55600 per therm. If this is the rate complainants were required to pay PG&E for gas, it stands to reason that their credit should be based on this rate since PG&E receives its "estimated annual revenue" in Rule 15.D(2) from complainants at this rate.

The Commission sets rates on a prospective basis. As part of the rate-setting process, it is a fundamental assumption that the projected revenue the utility will collect through rates will equal projected expenses found reasonable by the Commission. These expenses include the cost of gas, maintenance and operation, depreciation, taxes, and return on rate base, among others. Return on rate base is determined first as a percentage value. The percentage is then converted to a component of the revenue requirement by applying the percentage value to the rate base. This component includes return on equity for the company's shareholders. Any portion of a gas extension line cost that is not borne by the applicant would then be accounted for in PG&E's rate base. All ratepayers would then be responsible for the cost of the extensions not covered by the advances. Advances are deducted from the plant costs to arrive at rate base.

PG&E in effect decreased its rate base by requiring greater advances than permitted by the tariff. Unless a corresponding adjustment has been made in the amount estimated for advances for the construction of new facilities, the utility's investors will have received the same return on equity for a lower investment than was assumed during the rate case. Increased advances may therefore benefit the utility investor rather than the ratepayer. Authorizing PG&E's "net revenue" method would result in new customers paying a far greater portion of the cost of the extension of the facilities than is the case under the existing rules. We believe that until the Commission has had the opportunity to have a complete study made of the effects of changing the main extension rule, as required by the Legislature in Senate Bill 48 (PU Code Section 783), PG&E should be ordered to discontinue the use of its "net revenue" method.

During the hearing the staff witness recommended that in addition to PG&E being required to resume the same procedures for calculating revenues for gas main extensions that it previously has done and as other utilities presently do, PG&E should also be ordered to return excessive advances plus interest to all applicants for service who have had to pay advances under the "net revenue" method and to file a report with the Commission staff listing the name and amount of refund made to each customer. PG&E moved to strike the staff recommendation, contending that the staff recommendation is overly broad and that such recommendation should only be made in a generic proceeding initiated by the staff, such as a hearing on an order instituting investigation (OII), rather than in a complaint matter. The motion to strike is denied. A generic proceeding would be the proper vehicle if the Commission decided to change a tariff rule affecting all gas utilities' rules. However, in this case, we are only going to require that PG&E conform to its existing tariff Rule 15.D. as interpreted prior to 1978 and, therefore, we do not agree with PG&E that a generic proceeding is necessary in order to require PG&E to make refunds of excessive advances previously paid by applicants for gas main extensions which were calculated by PG&E under its "net revenue" interpretation.

A public utility is bound by its filed tariff until such time as that tariff is modified by Commission order. Only the Commission, not PG&E's officers or employees, has the authority to modify tariffs. This case involves interpretation of a tariff provision, and all customers, past, present, and future, are necessarily affected by the outcome of this decision. The Commission, therefore, has discretion to decide issues affecting others similarly situated to complainants through ad hoc litigation, in a complaint case, as it would in a generic proceeding. To do otherwise would be to apply one tariff interpretation only as it affects complainants in this proceeding while permitting a different and discriminatory tariff interpretation against other customers similarly situated. The law is clear that tariffs must be uniformly enforced to prevent discrimination. We conclude that PG&E has unilaterally deviated from its filed tariff and should be required to adhere to it for all its customers.

Public Utilities Code Section 736 limits the time within which a party may bring a complaint for damages resulting from a violation of Section 532.[7/] Such complaint must be brought within three years from the time that the cause of

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7/ Section 532 states, in relevant part:

> "...no public utility shall charge, or receive a different compensation for any product or commodity furnished...than the...charges applicable thereto as specified in its schedules on file and in effect at the time, . . ."

action accrues.[8/] Since complainants' cause of action arose on July 13, 1982 when they paid the advance to PG&E and the complaint was filed on June 2, 1983, we can grant the remedy sought by complainants. However, we are limited to granting relief to others similarly situated insofar as their claims are not barred by Section 736.

The order we issue today will require PG&E to provide notice (with copies to staff) to all customers who have executed gas main extension contracts with PG&E within the past three years, wherein the "net estimated annual revenue" basis was used to calculate the free footage allowance credit. As detailed in the ordering paragraphs of this decision, such notice will provide the calculation of a refund appropriate to each case, and will provide for payment of the refund, plus interest, upon the customer's presentation of a written claim to PG&E. In addition, we will require PG&E to submit quarterly reports, commencing June 1, 1984, listing pertinent information about each refund made pursuant to this decision.

8/ Section 736 further provides in relevant part:

> ". . . If claim for the asserted damages has been presented in writing to the public utility concerned within the period of three years, the period shall be extended to include six months from the date notice in writing is given by the public utility to the claimant of the disallowance of the claim, or of any part or parts thereof specified in the notice."

<u>Findings of Fact</u>

1. PG&E entered into separate agreements with PPC and MPC for the installation of a gas main extension to service complainants' newly constructed pistachio drying facility.

2. PG&E's estimated annual revenues to be received from PPC and MPC were calculated by multiplying the annual estimated gas usage by the rate of $0.08691 per therm. The rate of $0.08691 per therm was calculated by subtracting the cost of purchased gas by PG&E from its Schedule No. G-2 rate of $0.55600 per therm.

3. PG&E's Schedule No. G-2 at the time of entering into the agreements with PPC and MPC shows the cost of gas to customers to be $0.55600 per therm.

4. Prior to 1978, PG&E interpreted the term "estimated annual revenue" contained in its Rule 15.D(2) to mean the annual gross revenue. In determining annual gross revenue, PG&E multiplied the estimated gas usage per year times the tariff rate.

5. In 1979, PG&E informally contacted the Commission's Utilities Division staff to discuss an advice letter filing to modify its tariffs and change the method of computing the "estimated annual revenue" in Rule 15.D(2) from gross revenue to net revenue. PG&E was advised by the staff that because a revised Rule 15 to cover this matter was pending in C.10260, PG&E should wait until the case was decided before making the filing.

6. The informal advice given by the Commission staff was not binding upon PG&E and such informal advice is not to be construed as a decision of the Commission. Furthermore, the informal advice given by the Commission staff did not prohibit PG&E from submitting its advice letter if it chose to do so.

7. PG&E's unilateral gas line extension credit allowance change from a gross annual revenue to a net annual revenue interpretation of Rule 15.D(2) was never authorized by this Commission.

8. The credit allowance granted to PPC based on "gross annual revenue" should be 84,000 therms times 1.5 months (total annual usage) times $0.55600 per therm for a total of $70,056. The credit based on "gross annual revenue" to MPC should be 58,800 therms times 1.5 months (total annual usage) times $0.55600 per therm for a total of $49,039.

9. The combined credit based on "gross annual revenue" for PPC and MPC should be $119,095.

10. The total cost of installation of the gas main extension installed by PG&E for PPC and MPC is $107,361.

11. PPC and MPC paid PG&E a total of $88,744.88 as an advance for installation of a gas main extension.

12. The term "estimated annual revenue" contained in Rule 15.D(2) is construed to mean "estimated <u>gross</u> annual revenue" as previously interpreted and used by PG&E prior to 1978.

13. In interpreting the expression "estimated annual revenue" to mean "estimated net annual revenue" and calculating the credit to be granted customers according to the estimated net annual revenue, PG&E has deviated from its filed tariff.

Conclusions of Law

1. PG&E has improperly interpreted its Rule 15.D(2) resulting in a deviation from its filed tariff. As a result, PG&E has understated the amount of credit to be allowed PPC and MPC, and PG&E should be required to refund all amounts paid by PPC and MPC as an advance for the cost of installation of the gas main extension since the total credit for free footage allowance exceeded the total cost of installation.

2. Since PG&E's deviation from its filed tariff may have adversely affected other main extension applicants since 1978, PG&E should be required to refund excess advances collected from all applicants in situations wherein "estimated annual revenue" was determined by PG&E using the net annual revenue rather than the gross annual revenue subject to the statute of limitations, PU Code Section 736.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) shall refund to Pistachio Producers of California (PPC) $52,203.37, which PPC advanced to PG&E for the cost of installation of a gas main extension, plus interest at the same rate as paid on customers' deposits per PG&E Gas Rule No. 7, Deposits, from July 15, 1982.

2. PG&E shall refund to Madera Processing Corporation (MPC) $36,541.51, which MPC advanced to PG&E for the cost of installation of a gas main extension, plus interest at the same rate as paid on customers' deposits per PG&E Gas Rule No. 7, Deposits, from July 15, 1982.

3. Within 30 days of the effective date of this decision PG&E shall provide notice to all its customers who have executed gas main extension contracts within the three-year period predating this decision, wherein the "net estimated annual revenue" basis was used to calculate the free footage allowance credit. In the case of each affected customer, this notice shall specify the dollar difference between the actual advance paid (using the net estimated annual revenue basis) and the advance which should have been paid (using the gross estimated annual revenue basis). In each case such notice shall further inform the affected customer that he/she may present a written claim for refund of this differential to PG&E, subject to PU Code Section 736. No later than 30 days following presentation of such written claim, PG&E shall refund the excess advance collected, plus interest thereon from the date of contract execution. Such interest shall be calculated at the same rate as paid on customers' deposits (per PG&E Gas Rule No. 7, Deposits).

4. We further direct PG&E to provide simultaneous copies of the above notices to our Energy Service and Safety Branch and Legal Division staff appearances in this proceeding. In addition, PG&E shall submit quarterly reports to our Energy Service and Safety Branch staff commencing June 1, 1984, listing the name and amount of refund made to each customer, as above required. PG&E's obligation to make such reports will cease with the report detailing the last refund made by PG&E under the terms of this decision. We expect our staff to monitor this situation and report to us if necessary.

C.83-06-01 ALJ/EA

5. This order shall not be applicable to those contracts submitted to the Commission and granted approval by Commission resolution.

This order is effective today.

Dated APR 4 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

Commissioner William T. Bagley being necessarily absent, did not participate.

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Joseph E. Bodovitz, Executive Director