

Decision 84 06 021

JUN 6 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HEWLETT-PACKARD COMPANY,
a California corporation,

Complainant,

vs.

PACIFIC GAS AND ELECTRIC
COMPANY, a Corporation,

Defendant.

Case 10449
(Filed October 21, 1977)

ROBERT H. WALTER, ET AL.,

Complainants,

vs.

PACIFIC GAS AND ELECTRIC
COMPANY,

Defendant.

Case 10450
(Filed October 21, 1977)

O P I N I O N

Complaint of Hewlett-Packard Company

In the early 1970s Hewlett-Packard Company constructed a building at 1400 Fountain Grove Parkway, Santa Rosa, to manufacture electronic equipment. For its manufacturing process it required a supply of natural gas on an interruptible basis in the quantity of 34,000 cubic feet per hour.

Hewlett-Packard alleges that Pacific Gas and Electric Company (PG&E) in May 1971 represented to Robert H. Walter, Hewlett-Packard's predecessor-in-title to the property upon which its building was constructed, that it would agree to extend gas distribution mains and related facilities to Hewlett-Packard's property line at PG&E's sole cost. Hewlett-Packard further alleges that PG&E refused to supply the natural gas mains to Walter at PG&E's

sole cost, but rather agreed by a letter proposal dated May 19, 1972 (as revised May 30, 1972 and October 12, 1972) to extend interruptible gas service to Walter for the benefit of Hewlett-Packard and Walter at a cost to Walter of \$21,333. Hewlett-Packard also alleges that PG&E has refused to comply with the terms of the letter proposal dated May 19, 1972 as revised.

Hewlett-Packard states in its complaint that PG&E by letter dated June 20, 1973 informed Hewlett-Packard that PG&E has filed proposed changes in its Rule 15, "Gas Main Extensions," and that the proposed changes in Rule 15 would require that any applicant for new interruptible service be required to pay the entire cost of any main extensions or reinforcements required and that, in addition, such applicant would be required to pay a monthly cost of ownership charge on the entire amount advanced at the rate of 1% per month for a period of 60 months. Hewlett-Packard signed the contract required by PG&E. The contract calls for a payment by Hewlett-Packard of \$25,129.35 for the cost of the facilities; monthly payments of \$251.29 for eight months, and \$630.71 for 52 months, commencing at the time that such interruptible gas service is supplied to Hewlett-Packard's Santa Rosa facility.

Hewlett-Packard contends that the facilities covered by the contract do not involve "unusual circumstances," but rather that the interruptible gas service requested by it constituted usual circumstances whereby a utility supplies natural gas to a customer. It believes there is nothing in the arrangement for interruptible gas service which would indicate that this is unusual circumstances within the exceptional cases language of Paragraph (E)(7) of Rule 15 of PG&E. Hewlett-Packard therefore requests an order requiring PG&E to return Hewlett-Packard's advance payment of \$25,129.35, to return any cost of ownership charges received by PG&E to date, to pay interest at 7% per annum upon such sums from the date of collection, and to provide gas supply facilities as described at PG&E's expense.

Complaint of Robert H. Walter, et al.

Walter's complaint is virtually identical to Hewlett-Packard's complaint. His complaint seeks reparations for the advance payment he made of \$37,941.65 and for any cost of ownership payments made at the rate of \$379.42 per month. He also seeks interest at 7% per annum on such sums from the date of collection or payment.

Background

Stanislaus Food Products Company (Stanislaus) was among 30 PG&E customers who, beginning in 1973, had been required by PG&E to enter into contracts agreeing to pay for the costs of constructing, owning, and maintaining additional facilities to accommodate their requests for increased interruptible gas service. Because these contracts deviated from PG&E's tariff, PG&E had filed advice letters seeking Commission approval for each of the contracts. In these letters, PG&E asserted that because projected revenues from the new services were inadequate to cover the costs of constructing the necessary additional facilities, "unusual circumstances" justified the deviation.¹ Each deviation contract submitted to the Commission by advice letter was approved by resolution.

(Stanislaus v PG&E, Case (C.) 10359)

Several complaints regarding these contracts for additional facilities were filed with the Commission. The Commission at first rejected PG&E's "unusual circumstances" rationale on May 3, 1977, in Carnation Co. v PG&E, 81 CPUC 581. However, in Stanislaus v PG&E, the Commission overruled Carnation, sustained PG&E's

¹ "Rule 15 - Gas Main Extensions"

* * *

"E. Special Conditions"

* * *

"7. Exceptional Cases

"In unusual circumstances, when the application of this rule appears impractical or unjust to either party, the utility or the applicant shall refer the matter to the Public Utilities Commission for special ruling or for the approval of special conditions which may be mutually agreed upon, prior to commencing construction."

"unusual circumstances" rationale, and denied Stanislaus relief. (Decision (D.) 90777, dated September 12, 1979, in C.10359) Stanislaus filed an application for rehearing of D.90777, which the Commission granted (D.91178, dated December 18, 1979). The Commission ordered rehearing of D.90777 "limited to the receipt of evidence and briefs on the issue of the existence of 'unusual circumstances' justifying the contract conditions requiring Stanislaus to pay for the construction and maintenance of facilities necessary to provide additional interruptible gas service to Stanislaus."

After hearing held pursuant to D.91178, the order granting rehearing, the Commission on June 16, 1981, issued D.93189 reaffirming its original D.90777. In D.93189 the Commission found:

- "1. In 1974 PG&E was projecting curtailment of all interruptible gas customers because of insufficient supplies of gas.
- "2. The projections of insufficient supplies were based upon the Arab oil embargo of 1973, the curtailment of deliveries to PG&E by El Paso commencing in November 1972, the curtailment of deliveries to PG&E predicted by Canada's NEB, and the steady decline of California gas production.
- "3. The effect of declining gas supplies and curtailment of interruptible gas customers is that new interruptible gas customers share in the amount of gas available to that class, but revenues from that class do not increase.
- "4. The construction of new gas facilities for interruptible customers under these conditions places a financial burden on existing ratepayers unless a deviation from Rule 15 is authorized.
- "5. It is unfair to existing customers to require them to pay the operating and maintenance expenses of new interruptible facilities when possible curtailment of the interruptible class may make it impossible for the class to return sufficient revenue to cover its own costs.

- "6. The factors listed in Findings 1 through 5, which assured that additions to the interruptible class or reinforcement of the facilities serving existing interruptible customers would cause PG&E to incur operating and maintenance expenses without corresponding additions to revenues, made the usual application of Rule 15 both unjust and impractical for PG&E.
- "7. The factors listed in Findings 1 through 5 justify deviations from Rule 15 under the "unusual circumstances" clause (Rule 15(E)(7)).
- "8. The increases in charges, resulting from the Stanislaus' contract, do not involve any factor for return on invested capital, but are merely designed to defray PG&E's construction and operating and maintenance expense.
- "9. The increased charges, provided by the Stanislaus contract, and authorized by Resolution No. G-1659, were just and reasonable."

The Commission concluded that Stanislaus' interpretation of Rule 15(E)(7) should be rejected in favor of PG&E's interpretation. Accordingly, it affirmed D.90777 and denied Stanislaus' complaint.

Stanislaus did not petition the California Supreme Court for a writ of review of D.93189. Rather, it challenged the decision by complaint in the Federal District Court in San Francisco. That complaint was dismissed by the court in July 1982. Accordingly, D.93189 was final in August 1982 when no notice of appeal was filed by Stanislaus.

Discussion

We believe that the disposition of these cases should be governed by D.93189 in the Stanislaus case. Hewlett-Packard and Walter have alleged no facts which would compel a result different than the one we reached in Stanislaus. On the facts alleged by Hewlett-Packard and Walter, which are similar to those alleged, proved, and found in Stanislaus, we would reach the same result, and we so conclude. The reasons for the application of Rule 15(E)(7) are the same here as they were in Stanislaus and we conclude that the application of that Rule by PG&E was proper. Accordingly,

to avoid repetitive litigation of similar complaints, we will in the following order dismiss these complaints for the reasons stated in D.93189.²

Findings of Fact

1. Hewlett-Packard and Walter have not alleged any facts which make their situations dissimilar to that presented in Stanislaus.

2. Dismissal of Hewlett-Packard's and Walter's complaints would avoid repetitive litigation of similar cases.

Conclusions of Law

1. The Commission's findings in D.93189 and its conclusion that PG&E's interpretation and application of Rule 15(E)(7) was proper, should apply to Hewlett-Packard's and Walter's complaints.

2. The complaints of Hewlett-Packard and Walter should be dismissed.

² By letter of March 16, 1984, Administrative Law Judge Baer invited counsel for Hewlett-Packard and Walter to state reasons, if they had any, why Hewlett-Packard's and Walter's complaints should not be dismissed based upon the Commission's decision in Stanislaus. He enclosed a copy of D.83-10-038 in C.10659, Crown Cork & Seal Company, Inc. v PG&E wherein the Commission recently dismissed a similar complaint. No response to the ALJ's letter has been received.

O R D E R

IT IS ORDERED that the complaints in Cases 10449 and 10450 are dismissed.

This order becomes effective 30 days from today.

Dated JUN 6 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO


DONALD VIAL

WILLIAM T. BAGLEY

Commissioners

Commissioner Priscilla C. Grow,
being necessarily absent, did
not participate

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


Joseph E. Bedovitz, Executive Director