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Decision 91-01-029 January 25, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Draeger's Supermarkets, Inc., Complainant, vs. Pacific Gas and Electric Company, Defendant.	Case 89-09-023 (Filed September 15, 1989)

Richard A. Draeger and Rick Kohl, for Draeger's Supermarkets, Inc., complainant.
Jefferson C. Bagby, Attorney at Law, for Pacific Gas and Electric Company, defendant.

O P I N I O N

Summary of Complaint

On September 15, 1989, Draeger's Supermarkets, Inc. (complainant) filed this complaint against Pacific Gas and Electric Company (defendant). Complainant operates two grocery stores served by defendant's A-10 electric Tariff Schedule; one store is in Los Altos and the other is in Menlo Park.

The complaint asserts that defendant knew as early as February 1988[1] that most, if not all, grocery market accounts would experience lower electric bills if placed on the A-11 Tariff Schedule.[2] However, defendant failed to notify complainant of

1 Based on defendant's draft "Grocery Market Segment Study" dated February 1988.

2 Rates under the A-11 Tariff Schedule are based on the time that energy is actually used. Energy costs the most during the peak periods between 12:00 noon and 6:00 p.m. Reduced energy costs

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the A-11 Tariff Schedule and energy cost savings, pursuant to defendant's Rule 12.

Complainant believes that it would have saved $24,896 in energy cost, or $11,984 at its Los Altos store and $12,912 at its Menlo Park store, had complainant been on the A-11 Tariff Schedule since February 1988. Accordingly, complainant seeks a $24,896 refund from defendant.

Answer to Complaint

Defendant answered the complaint on October 29, 1989. Defendant acknowledged that complainant's stores served on the A-10 Tariff Schedule would be switched to the A-11 Tariff Schedule on November 1, 1989, pursuant to complainant's March 14, 1989 written request.

Defendant admits that as of February 1988 it had knowledge that some, but not all, Grocery Market accounts would experience lower rates if placed on the A-11 Tariff Schedule. However, it did not know which stores would benefit from the A-11 Tariff Schedule. The only way benefits can be conclusively determined is by installing a time-of-use meter on a given store for a test period.

Defendant denies that it has an obligation under applicable tariffs to place all accounts that may benefit from A-11 Tariff Schedule on the A-11 Tariff Schedule. It points out that consideration must be given to manpower and monetary constraints which limit the number of new time-of-use meters that can be

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are applicable during the partial-peak periods of 8:30 a.m. to 12:00 noon and 6:00 p.m. to 9:30 p.m., and the lowest during the off-peak periods from 9:30 p.m. to 8:30 a.m., Monday through Friday and all day Saturday, Sunday, and holidays.

installed in a given year. Currently, defendant has a Commission established goal of installing 20,000 new time-of-use meters each year, equally divided, if possible, between the agricultural, residential, and commercial account categories. Further, state law requires that all agricultural accounts requesting the A-11 Rate Schedule must be given first priority.

Contrary to complainant's accusation that defendant never advised complainant of the A-11 Tariff Schedule, defendant asserts that it invited complainant to attend a grocery store owners seminar on April 7, 1988 where the A-11 Tariff Schedule was discussed, and on at least two other occasions defendant's account executive advised complainant of the A-11 Tariff Schedule. The first occasion was on July 7, 1988 and the second was on March 29, 1989.

Hearing

An evidentiary hearing was held on January 4, 1990 in San Francisco. Complainant was represented by Rick Kohl (Kohl), a consultant from Pacific Energy Services. Kohl and Richard Draeger (Draeger), controller for complainant, testified for complainant.

Defendant was represented by Jefferson C. Bagby, an attorney. Rate designer Phillip J. Quadrini, consultant and former time-of-use marketing employee of defendant Lorena Fee (Fee), and marketing employees Victor D. Silva (Silva), and Ronald Scott Whyte testified for defendant.

Discussion

There are two salient issues in this complaint proceeding. First, is the issue of whether defendant notified complainant that complainant could save money by converting from the A-10 to the A-11 Tariff Schedule. Second, is the issue of whether defendant is required to convert defendant's market accounts from the A-10 Tariff Schedule to the A-11 Tariff Schedule.

Notice of A-11 Tariff Schedule

Draeger testified that he first became aware of the A-11 Tariff Schedule when Kohl informed him of the tariff in March 1989, one year after defendant knew that grocery stores could save money by converting to the A-11 Tariff Schedule. Subsequently, on March 14, 1989, complainant sent a letter to defendant requesting that a time-of-use meter be installed at the Menlo Park store and that complainant's account be converted from the A-10 to the A-11 Tariff Schedule on November 1, 1989, approximately eight months from the date of complainant's letter. On the same day, a similar letter was sent to defendant for complainant's Los Altos store.

Although Draeger already concluded that the A-11 Tariff Schedule was going to save him money, he requested an eight-month delay in converting to the A-11 Tariff Schedule pending a conclusive reason to convert. Specifically, he wanted the time-of-use meter results to verify results previously conducted by Kohl.

Since Draeger did not recall receiving notice of the A-11 Tariff Schedule from defendant, Draeger requested a refund for the savings that complainant would have realized if complainant converted to the A-11 Tariff Schedule at the time defendant first knew that grocery stores could save money, pursuant to Rule 12.

Draeger did not recall receiving an invitation to defendant's April 7, 1988 grocery store owners seminar, but he did recall receiving a telephone call from defendant regarding the seminar and being told that the seminar would involve energy conservation matters that complainant "could undertake to save money down the road." Draeger did not recall any discussion about the A-11 Tariff Schedule. Defendant explained that he was not interested in the seminar because he was in the process of changing the store refrigeration systems.

Fee, defendant's account representative for complainant in 1988, explained that she called Draeger to invite complainant to the April 7, 1988 grocery store owners seminar in Sunnyvale. An

invitation was also mailed to complainant's store. Although the A-11 Tariff Schedule was not listed as a specific topic, it was discussed at the seminar as part of defendant's regular demand side management programs.

Since Draeger did not attend the conference, Fee personally visited Draeger on July 7, 1988 to discuss the A-11 Tariff Schedule. She discussed the advantages of converting to the A-11 Tariff Schedule and gave him a rate comparison between the A-10 and A-11 Tariff Schedule. She also discussed energy-saving equipment with Draeger. Draeger, apparently preoccupied with managing a major expansion and renovation of his store, was not interested in the A-11 Tariff Schedule.

Consistent with defendant's policy to document visits to customers, Fee returned to her office and documented her discussion with Draeger. A copy of that documentation was introduced as Exhibit E-24. Fee returned to Draeger's office on July 26, 1988. However, Draeger still was not interested in the A-11 Tariff Schedule. He was more interested in energy conservation equipment that was going to be installed in the store.

Silva explained that he copied Exhibit E-24 from defendant's computer records. He also confirmed that Fee's customer visit documentation is a normal business record and that Fee has not had any opportunity to change the documentation of her visit.

Defendant's Rule 12 states in part that in the event of the adoption by the Company of new or optional schedules or rates, the Company will take such measures as may be practicable to advise those of its customers who may be affected that such new or optional rates are effective.

Clearly, Rule 12 requires defendant to provide complainant notice of its time-of-use schedule. Although the rule is silent on what practical measures defendant must undertake to inform complainant, the A-11 Tariff Schedule does provide some guidance. The tariff, in effect from November 1, 1987 to March 22, 1989, states in part that service is provided at the sole option of the utility based upon the availability of metering equipment.

In a complaint case the burden of proof lies with the complainant. Complainant presented no evidence to show that defendant did not inform complainant of the A-11 Tariff Schedule.

Defendant demonstrated that it exercised good faith judgment in attempting to inform complainant of the A-11 Tariff Schedule within a reasonable period of time that defendant knew that the A-11 Tariff Schedule may benefit grocery store customers. Not only did defendant put together a seminar within two months of its February 1988 grocery store customer cost benefit awareness, it invited complainant both by telephone and written invitation to attend. However, complainant declined to attend.

Defendant, aware that complainant did not attend the seminar, took on the added responsibility of discussing the A-11 Tariff Schedule with Draeger in person on July 7, 1988, three months after the seminar, and on July 26, 1988 attempted to follow up on the prior A-11 Tariff Schedule discussion.

Even when complainant became informed of the A-11 Tariff Schedule benefits from Kohl, complainant chose not to convert to the A-11 Tariff Schedule until November 1, 1989, approximately eight months later. Complainant's action substantiates defendant's claim that the A-11 Tariff Schedule is not beneficial for all grocery store customers and can only be conclusively determined by analyzing the results of a time-of-use meter.

Irrespective, complainant failed to substantiate that the delay in converting to the A-11 Tariff Schedule resulted from any fault on the part of defendant. Therefore, the assertion that

defendant failed to inform complainant of the A-11 Tariff Schedule benefits is without merit and should be denied.

Requirement to Convert to A-11 Tariff Schedule

Defendant did convert complainant's account to the A-11 Tariff Schedule on November 1, 1989 as requested by complainant. Since defendant acted in good faith and on a timely basis in attempting to notify complainant of the tariff, any alleged requirement that defendant must convert complainant to the A-11 Tariff Schedule is moot and need not be addressed. Similarly, any request for reimbursement of projected savings should be denied.

Findings of Fact

1. Defendant knew as early as February 1988 that some grocery store accounts would experience lower electric bills if placed on the A-11 Tariff Schedule.

2. The only way tariff benefits can be conclusively determined is by installing a time-of-use meter on a given store for a test period.

3. Complainant does not recall defendant discussing A-11 Tariff Schedule benefits with complainant.

4. Complainant asserts that it first became aware of the A-11 Tariff Schedule in March 1989.

5. On March 14, 1989 complainant requested that its stores be converted to the A-11 Tariff Schedule effective November 1, 1989.

6. Draeger received a call from defendant regarding the April 7, 1988 grocery store owners seminar.

7. The seminar addressed energy conservation matters that complainant could undertake to save money.

8. An invitation to the seminar was mailed to complainant.

9. Complainant did not attend the seminar.

10. The A-11 Tariff Schedule was discussed as part of defendant's regular demand side management programs.

11. Defendant visited complainant on July 7, 1988 to discuss the tariff benefits.

12. Defendant visited complainant on July 26, 1988 to follow up on the July 7, 1988 tariff discussion.

13. Defendant documents its visits to customers as a normal business practice.

14. Defendant's July 7 and July 26, 1988 visits with complainant were documented.

Conclusion of Law

The complaint should be dismissed with prejudice.

O R D E R

IT IS ORDERED that the complaint in Case 89-09-023 is dismissed with prejudice.

This order becomes effective 30 days from today.

Dated January 25, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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

NEAL J. SHULMAN, Executive Director