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Decision 91-08-020 August 7, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA:

FOREST CITY MANAGEMENT, INC., a corporation,

Complainant,

vs.

SOUTHERN CALIFORNIA GAS COMPANY, a corporation,

Defendant.

ORIGINAL

Case 90-07-058
(Filed July 20, 1990;
amended September 19, 1990)

Luce, Forward, Hamilton & Scripps, by John W. Leslie and Bryan C. Vess, Attorneys at Law, for Forest City Management, Inc., complainant.
E. R. Island and Glen J. Sullivan, Attorneys at Law, for Southern California Gas Company, defendant.

OPINION

Forest City Management, Inc. (Forest City or complainant) complains that Southern California Gas Company (SoCalGas or defendant) improperly refused and continues to refuse to serve complainant's residential apartment complex with natural gas transport-only service under defendant's GT-20 tariff. Forest City requests that defendant be ordered to provide transport-only service at the rate set forth in SoCalGas Rate Schedule GT-20 and that reparations be ordered to be paid to complainant in the amount of the difference between the rate actually charged and the requested rate.

Following defendant's answer, a duly noticed public hearing was held in Los Angeles on January 16 and 17 and February 5, 1991, and the matter was submitted upon the filing of reply briefs on April 4, 1991.

Background Forest City sets forth the background circumstances leading to the filing of this complaint in its initial brief, as follows:

"Forest City is an owner of a residential apartment complex in Los Angeles known as Park Labrea. Park Labrea, one of the largest apartment complexes in the United States, includes approximately 4,200 apartments with an estimated 7,000 residential consumers of natural gas. Residents of the Park Labrea apartments are served from a single meter that is connected to SoCalGas' distribution system.

"As a residential customer, Park Labrea is classified as a Priority 1...user. Park Labrea has gas usage in excess of 250,000 therms per year. In fact, it uses an average in excess of 250,000 therms per month. Based upon the size of its gas requirements, Park Labrea qualifies for 'transportation only' service. . . .

"In early January 1989, Forest City began exploring with SoCalGas the possibility of Park Labrea receiving transmission-only service from the utility. On January 12, 1989, SoCalGas' billing account supervisor wrote to Park Labrea and provided it with copies of the GT-20 tariff, representing that the tariff was 'applicable for the gas service at Park Labrea.' This correspondence was the first of many communications in early- to mid-1989 in which SoCalGas employees represented to Forest City that the GT-20 tariff applies to Park Labrea.

"The GT-20 tariff states in part that it is '[a]pplicable to transportation of customer-owned gas for uses at each Facility classified in Rule 23 as Priority 1 and 2A with usage exceeding 250,000 therms per year...."

* * *

"Based in part upon the representations made by SoCalGas, and also based on the language of the GT-20 tariff itself, Forest City took a series of steps to obtain transport-only service under

GT-20. First, on May 9, 1989, Forest City submitted a formal request to SoCalGas for service under GT-20 and began to discuss with SoCalGas the terms of a contract for service under GT-20. . . . Second, Forest City negotiated to purchase its gas supply from an independent supplier. . . . Third, Forest City worked with SoCalGas and the third-party supplier to coordinate the deliveries of the gas supply to the SoCalGas system. . . .

"After months of discussion, SoCalGas refused Forest City's request for service under GT-20 in September 1989. Reversing its earlier position, SoCalGas asserted that the only tariff applicable to natural gas transportation for Park Labrea was Rate Schedule GM-E. SoCalGas explained that in its view, a special condition in the GM-E tariff -- Special Condition 7 -- excluded the application of the GT-20 tariff for the transportation of residential customer-owned gas. . . .

"Since September 1989, SoCalGas has repeatedly refused -- and continues to refuse -- to provide transportation-only service to Park Labrea under Rate Schedule GT-20. . . . As a consequence, Park Labrea has been unable to obtain transportation-only service under GT-20 and has been forced to rely upon service under Rate Schedule GM-E. In July of 1990, the Commission, in Resolution G-2904, invited Forest City to file a complaint to address the issues of the applicability of the GT-20 tariff. . . . This proceeding ensued."

Position of SoCalGas

SoCalGas admits that it initially provided Forest City with incorrect information as to the applicability of its tariffs to complainant, but argues that complainant has not been prejudiced thereby. It asserts that complainant was and is entitled to transportation service under Special Condition 7 of Rate Schedule GM-E, and not under Rate Schedule GT-20.

Excerpts from SoCalGas' opening brief follow:

"Forest City has requested reparations based on service at GT-20 rates for the period from May,

1989, to the present. As is discussed in a later section of this brief, there have been changes to SoCalGas' tariffs after May, 1989, that make it abundantly clear that Forest City is not eligible for transportation service under Rate Schedule GT-20. However, even under the language of SoCalGas' tariffs as of May, 1989, Forest City was eligible for transportation service only at rates under Rate Schedule GM-E, and not under Rate Schedule GT-20.

"There are several reasons why SoCalGas' interpretation of its tariffs is correct. First, Rate Schedule GM-E specifically provided for transportation service for residential customers such as Forest City under that rate schedule. At all relevant times, up to and including the present, Special Condition 7 of Rate Schedule GM-E has provided as follows: 'Customers receiving service under this schedule with usage at each facility in excess of 250,000 therms per year may qualify for transportation service under a special contract.' . . .

"It is undisputed that Forest City had been receiving sales service under Rate Schedule GM-E at the time it requested transportation service in May of 1989. Special Condition 7 of Rate Schedule GM-E clearly provided that customers receiving sales service under that schedule would receive transportation service under special contract terms pursuant to that rate schedule. Consideration of any other rate schedule is unnecessary and inappropriate because the rate schedule under which Forest City was receiving sales service specified how it was to receive transportation service should it so elect.

"There is no significance in the fact that SoCalGas has not filed a separate, full-blown transportation rate schedule for residential transportation customers. There are so few residential customers of a size in excess of 250,000 therms per year that it did not make sense to create a whole new rate schedule for the few customers out of an already small group that might elect transportation service.

Furthermore, the Commission contemplated service to core transportation customers on a contract basis when it stated in D.86-12-009 at mimeo p.54: 'For a customer in the core class to obtain transmission-only service, it will be required to enter into a contract with the utility.'

"Furthermore, it is evident that Rate Schedule GT-20, even as it read in May of 1989, did not apply to residential service. First, at all relevant times Public Utilities Code Section 739 required that gas utilities provide service to residential customers pursuant to a rate structure providing baseline rates, with the baseline rates applying to the first or lowest block of an increasing block rate structure. Neither Rate Schedule GT-20 nor Rate Schedule GN-20 provided for a baseline allowance for each residential dwelling unit. By contrast, Rate Schedule GM-E had (and still has) baseline allowances per dwelling unit applied to an increasing block rate structure. It would have been contrary to Public Utilities Code Section 739 for SoCalGas to provide service to Forest City, a residential customer, under Rate Schedule GT-20. Forest City has no right to reparations based on a claim to service under a rate schedule that statute bars from applying to residential customers such as Forest City.

"In addition, the application of Rate Schedule GT-20 to residential transportation service would have been inconsistent with the basic structure of SoCalGas' tariffs. A simple examination of all of SoCalGas' rate schedules...shows that they have a consistent pattern of paired sales and transportation rate schedules. Sales schedules are denominated 'GN-xx' and transportation schedules are denominated 'GT-xx'. The sales schedules and transportation schedules for the same customer groups have the same number. For instance, GN-40 is the schedule for sales to Enhanced Oil Recovery (EOR) customers, and GT-40 is the schedule for transportation service for EOR customers. The exceptions to this rule are GN-10, the sales schedule for commercial and industrial core customers ineligible for transportation because they are smaller than

250,000 therms per year, and the residential sales schedules (including GM-E) that all contain a special condition providing for transportation service by special contract for residential customers in excess of 250,000 therms.

"It is evident from the context of SoCalGas' tariffs that a particular transportation schedule applies only to customers otherwise eligible for sales service under the 'GN' schedule with the same number. This fact is apparent not only from the general structure of the rate schedules, but also from cross-references between the paired sales and transportation schedules. For instance, the applicability clause of Rate Schedule GN-20 at all relevant times stated that: 'Customers eligible for service under this schedule may also elect transportation service under Rate Schedule GT-20.' (By contrast, there was no clause in Rate Schedule GM-E that stated that Rate Schedule GT-20, or any other rate schedule, was applicable to transportation for customers who had been receiving sales service under GM-E. Instead, Rate Schedule GM-E had Special Condition 7.)

"Rate Schedule GT-20 also contained specific references back to Rate Schedule GN-20. Rate Schedule GT-20 provided that if a customer charge was collected under Rate Schedule GN-20, no duplicative charge would be made under GT-20. Rate Schedule GT-20 also stated that the transportation transmission charges would be the difference between the core-elect sales rate under GN-20 and the average cost of the core gas portfolio. Under the Commission's 'equivalent margin' principle for transportation rate design, to be a customer eligible for a transportation rate based on a particular sale schedule, one would have to be eligible for service on that sales schedule. In this case, Forest City clearly was never eligible for sales service under Rate Schedule GN-20, because GN-20 at all times stated that it was applicable to commercial and industrial service. Therefore, Forest City was never eligible for transportation service under Rate Schedule GT-20, the transportation schedule

that is companion to GN-20. The references to GN-20 in GT-20 were sufficient to put a reasonable person on notice of this fact, especially when coupled with the overall structure of SoCalGas' rates, the lack of baseline allowances in GT-20, and the specific provision for transportation service pursuant to Special Condition 7 of Rate Schedule GM-E.

Discussion

The position of defendant, supported by its reasoned explanation of the applicability of its tariffs, is correct. Forest City, a residential customer, was never entitled to transportation service offered to industrial and commercial customers.

As SoCalGas points out, if the prayer of this complaint was granted, complainant would obtain, through transportation, a reduction in its transmission rate below the transmission rate implicit in its current sales rate in direct contravention of Commission policy. We view such a result as falling within the purview of Public Utilities Code § 532 which forbids any utility from refunding, directly or indirectly, in any manner or by any device, tariffed charges for service.

Complainant, a large residential gas customer exploring the idea of transporting its own gas, is mistakenly informed that two transportation tariffs may apply to it. First, the residential tariff under which it receives sales service offers transportation service by special contract. Second, the transportation tariff designed for gas transportation by large industrial and commercial customers appears, by reason of an incomplete title on the schedule, likewise applicable. Since the transportation tariff for large industrial and commercial customers is substantially lower than the transportation rate for residential customers, complainant seeks to receive the savings that would result from application of the second, inapplicable tariff. However, as SoCalGas has

explained, the residential tariff is the only tariff available to complainant for gas transportation.

Rate Schedule GT-20 was later clarified by defendant and the Commission by adding the words "Commercial and Industrial Service" to the title. Commission Resolution G-2904, authorizing the amendment of the title of GT-20 "to eliminate possible ambiguous applicability to residential customers" contained the following findings:

- "1. The Commission has established separate rate designs and rate schedules for the residential class of customers and the commercial and industrial class of customers.
- "2. SoCalGas' Rate Schedules GM, GS, and GSL provide residential service. Special Condition 7 of these schedules offer transportation-only service for residential customers by special contract.
- "3. While GT-20 does not explicitly exclude residential customers, its rate design and reference to GN-20 (Gas Service for Large Core Commercial and Industrial Customers) demonstrate that it is intended for commercial and industrial customers."

While it is regrettable that defendant initially provided incorrect information to complainant, it is clear that it supplied accurate counsel with respect to its tariffs to complainant during the pendency of negotiations before a contract was signed. Complainant remains entitled to contract for transportation of its own gas in accordance with the provisions of residential Rate Schedule GM-E, and not GT-20.

Findings of Fact

1. Forest City is an owner of a residential apartment complex in Los Angeles known as Park Labrea.
2. Park Labrea receives gas service from SoCalGas on residential residential Rate Schedule GM-E.

3. In January 1989, Forest City began exploring the possibility of Park Labrea receiving transmission-only service from defendant.

4. Defendant incorrectly informed complainant that transmission-only service was available to it on Rate Schedule GT-20, a schedule applicable only to industrial and commercial customers on Rate Schedule GN-20.

5. Rate Schedule GT-20 was later clarified by amendment to eliminate its possible ambiguous applicability to residential customers.

6. Defendant supplied accurate information that only Rate Schedule GM-E was available to complainant during the course of negotiations before any contract was signed.

Conclusion of Law

The complaint should be denied.

ORDER

IT IS ORDERED that the complaint is denied and this proceeding is closed.

This order becomes effective 30 days from today.

Dated August 7, 1991, at San Francisco, California.

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

Commissioner Daniel Wm. Fessler,
being necessarily absent, did
not participate.

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

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NEAL J. SHULMAN, Executive Director