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Decision 91-10-045 October 23, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

California League of Food Processors, Complainant, vs. Pacific Gas and Electric Company, Defendant.	ORIGINAL Case 90-06-045 (Filed June 21, 1990)

Patrick J. Power, Attorney at Law, and E. D. Yates, for California League of Food Processors, complainants.
Barbara S. Benson and Roger J. Peters, Attorneys at Law, for Pacific Gas and Electric Company, defendant.

O P I N I O N

The California League of Food Processors (CLFP) filed this complaint against Pacific Gas and Electric Company (PG&E) on June 21, 1990. The complaint alleges that PG&E's demand charges violate the prohibition on retroactive ratemaking. The complaint also alleges that the rate structure is unjust and unreasonable, in violation of Public Utilities (PU) Code Section 451, and that it is discriminatory in violation of PU Code § 453.

The complaint asks the Commission to provide that the demand rates charged to seasonal use customers be based solely on the customer's use of gas in the current period. It also seeks refunds from May 1, 1988 of amounts paid by seasonal use customers in excess of the amount that would have been paid had the rates been charged on a volumetric basis according to current use.

Two days of hearings were held in this matter in January 1991.

Demand Charges

The rate structures which are the subject of CLFP's complaint are described in PG&E's Schedules G-P2B and G-IND. The schedules include four charges: a monthly customer charge, an average demand charge (D1), a seasonal-peak demand charge (D2), and a volumetric charge. Each of the charges is based on a customer's gas use. The customer charge and D1 demand charges are based on the average monthly gas use by a customer during the 12 billing months ending with the current billing month. The D2 demand charge is based on a customer's highest seasonal calendar monthly use. The rates are negotiable in cases where the customer may have economic alternative fuel capability.

CLFP's Complaint

CLFP states that the demand charges are based on the customer's prior use and the actual cost of gas taken in any particular month cannot be ascertained until 12 months later. The effect of the rates, according to CLFP, is the same as if the Commission had authorized the utility to apply a rate retroactively for the previous 12 months.

CLFP argues that demand charges are a form of retroactive ratemaking contrary to PU Code $$ 454 and 489 (a). CLFP also states that the rates are discriminatory because customers with seasonal use pay higher rates than other customers, even though costs of serving seasonal use customers are lower. Customers such as food processors, according to CLFP, do not use energy during peak seasons and, therefore, do not impose the capacity costs of meeting demand during peak seasons.

PG&E's Response

PG&E argues that the Commission, in Decision (D.) 88-03-041, has already refuted the claim that its demand charges were retroactive ratemaking. It disputes CLFP's claim that demand charges are unduly discriminatory. PG&E argues that the complaint is a collateral attack on several decisions in other dockets, an

attack which is barred by § 1709. Finally, PG&E argues that, pursuant to § 728, reducing past charges would constitute impermissible retroactive ratemaking.

Discussion

CLFP's complaint does not claim that PG&E has violated any order or rule of the Commission. It does claim that PG&E's demand charges violate certain code sections. It also challenges the reasonableness of demand charges.

Demand charges were the subject of substantial review in several proceedings and were adopted by Commission decisions which are final. (See, for example, D.87-12-039, D.88-03-041, D.90-01-015, and D.90-04-021.) A rate which has been approved by the Commission is presumed to be reasonable as defined in § 451. Pursuant to § 1709, "the orders and decision of the commission which have become final shall be conclusive." Accordingly, CLFP cannot challenge the lawfulness of D.88-03-041, or any other decision adopting demand charges, in a collateral action. (People v. Western Air Lines 268 P.2d 723 (1954), City of Vallejo vs. PG&E, 18 CPUC 2d 374 (1985).)

Although we were not obliged to hear this case, we agreed to consider new evidence regarding demand charges in this complaint. The evidence, however, does not change our view regarding the reasonableness of the rate. Even if we found the rate unreasonable, we could not order PG&E to refund charges to customers as CLFP requests. Such refunds would require one of two outcomes, neither of which would not be lawful. Either PG&E's ratepayers or shareholders would have to bear the cost of the refunds. We could not order PG&E's shareholders to bear the cost of refunds in a case where PG&E complied with tariffs which were approved by the Commission. Nor could we require PG&E's ratepayers to bear those costs without violating the bar to retroactive ratemaking. (Gilroy Energy Company vs. PG&E, D.90-12-098 (1990)).

We need not consider the reasonableness of the demand charges prospectively because they were eliminated pursuant to D.90-09-089.

CLFP argues that demand charges violate the bar to retroactive ratemaking. D.88-03-041 found that the demand charges did not represent retroactive ratemaking because "the rate is set prospectively to recover a portion of the utility's revenue requirement during the period the rates are in effect." This decision was upheld on appeal and we need not consider the matter further.

CLFP also believes the charges are contrary to § 453 which prohibits discrimination. Section 453 states:

> "No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage."

CLFP argues that § 453 applies in this case because PG&E's demand charges affect certain of its clients differently from the way the charges affect other customers. CLFP does not argue that PG&E has applied its tariffs inconsistently between customers or that the tariffs are designed to prejudice any particular customer. The fact that a tariff may affect different members of a customer class in different ways does not constitute unlawful discrimination under § 453.

We find that PG&E's demand charges were lawful and will deny the complaint.

Findings of Fact

1. The Commission approved demand charges for PG&E in several decisions which are final.

2. D.90-09-089 eliminated demand charges for PG&E, effective August 1, 1991.

3. The evidence is this proceeding does not demonstrate that PG&E's demand charges were unreasonable.

Conclusions of Law

1. Section 1709 provides that, in a collateral action, final Commission decisions are conclusive.

2. PG&E's demand charges did not constitute retroactive ratemaking.

3. PG&E's demand charges were not unlawfully discriminatory.

O R D E R

IT IS ORDERED that California League of Food Processors' complaint against Pacific Gas and Electric Company is denied.

This order is effective today.

Dated October 23, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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

NEAL J. SHULMAN, Executive Director