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Decision 92-01-050 January 21, 1992

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

California League of Food Processors,

Complainant,

vs,

Pacific Gas and Electric Company,

Defendant.

Case 90-06-045
(Filed June 21, 1990)

ORDER DENYING REHEARING OF DECISION 91-10-045

The California League of Food Processors ("CLFP") has filed an application for rehearing of Decision (D.) 91-10-045. The Pacific Gas and Electric Company ("PG&E") has filed a response in opposition thereto. We have examined all the allegations of error in the application and the arguments in response, and are of the opinion that sufficient grounds for granting rehearing have not been shown. Therefore, we will deny the application.

In D.91-10-045, we denied the complaint filed by CLFP against PG&E which alleged that the application of the demand charges in PG&E's Schedules G-P2B and G-IND violated the prohibition on retroactive ratemaking, and that the operation of the rate structure containing these demand charges were unduly discriminatory. In this decision, we first discussed how the demand charges were the subject of substantial review in several proceedings, including D.87-12-039, D.88-03-041, D.90-01-015, and D.90-04-021. (D.91-10-045, p. 3 (slip op.)) We went on to explain how CLFP's complaint which alleged unlawful retroactive ratemaking constituted a collateral attack on these final decisions, especially D.88-03-041 which rejected the argument that the demand charges constituted retroactive ratemaking. (D.91-10-045, p. 3 (slip op.); see also, Re Rate Design for Unbundled Gas Utility Services [D.88-03-041] 27 Cal.P.U.C.2d 531,

544, fn. 2.) D.91-10-045 found that Public Utilities Code Section 1709 barred such a collateral attack. (D.91-10-045, p. 3 (slip op.)) This statutory section provides that "[i]n all collateral actions or proceedings, the orders and decisions of the [C]ommission which have become final shall be conclusive." (Pub. Util. Code, §1709.) We also considered new evidence on CLFP's claims of the unlawful retroactive and discriminatory effects of the demand charges in operation, and concluded that the claims were without merit. In this order we affirm our original decision.

In its application for rehearing, CLFP reiterates the arguments it has made previously that the application of PG&E's default rate structure to its members were unlawful on account of its retroactive operation and discriminatory effect. With respect to the retroactive ratemaking issue, CLFP claims that the operation of the rate structure violates the "filed rate doctrine" aspect of the rule against retroactive ratemaking. In support of this claim, CLFP relies on Associated Gas Distributors v. F.E.R.C. (D.C. Cir 1989) 893 F.2d 349, which found a purchase deficiency allocation mechanism, which CLFP likens to PG&E's default demand charges, to be unlawful because its use violated the federal filed rate doctrine under the Natural Gas Act. However, CLFP's reliance on Associated Gas Distributors is misplaced, because the Court of Appeals struck down the mechanism in this federal case on the grounds that the customers were not given sufficient notice of its use, and the fact that the customers were expected to pay a surcharge, over and above the rates on file at the time of sale, for gas they had already purchased. (Id. at pp. 355-356.) While in the instant case, the demand charges were adopted with full notice (see Southern California Gas Company (D.86-10-032) (1986) 22 Cal.P.U.C.2d 100, 104.); and neither PG&E nor the Commission have changed or altered the rate structure which was on file and by which CLFP's members were charged.

With respect to CLFP's argument that the operation of rate structure is unduly discriminatory against seasonal use customer, CLFP offers no new factual or legal arguments in its application for rehearing which would change our finding that the evidence in this proceeding does not demonstrate that PG&E's demand charges were unreasonable, and our conclusion that PG&E's demand charges were not unlawfully discriminatory. (D.91-10-045, pp. 4-5 (slip op.).)

Having considered each and every issue raised by CLFP, we conclude that rehearing should be denied. Therefore,

IT IS ORDERED that rehearing of D.91-10-045 is denied.

This order is effective today.

Dated January 21, 1992, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director