

Decision 83 10 038 OCT 19 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CROWN CORK & SEAL COMPANY, INC.)
 Complainant,)
 vs.)
 PACIFIC GAS AND ELECTRIC COMPANY,)
 a California corporation,)
 Defendant.)

Case 10659
(Filed August 24, 1978)

O P I N I O N

Complaint

In 1974 Crown Cork & Seal Company, Inc. (Crown) required natural gas as fuel for its can manufacturing equipment in Richmond. At Crown's request Pacific Gas and Electric Company (PG&E) offered to provide Crown with the quantities of natural gas it needed on an interruptible basis and to install, own, operate, and maintain certain additional facilities sized to meet Crown's requirements.

PG&E required Crown to pay \$25,045 in advance and to pay \$250.45 per month for 60 months in addition to its regular tariff rates. In assessing these additional charges, PG&E relied upon its tariff Rule 15(E)(7), which allows PG&E to depart from its main extension rule "in unusual circumstances."

Allegedly under economic compulsion Crown signed an agreement with PG&E on August 29, 1974, paid PG&E the down payment of \$25,045, and paid the monthly charge of \$250.45.

Crown contends that the facilities covered by the contract did not involve "unusual circumstances," but rather that the interruptible gas service requested by Crown constituted usual and unexceptional circumstances whereby a utility supplies natural gas to

a customer. Crown requests an order requiring PG&E to return to Crown its advance payment of \$25,045, all monthly payments, and 7% interest per annum from the date of each payment; and it also requests an order requiring PG&E to provide natural gas service to Crown on an interruptible basis for use in its facility in Richmond as a usual circumstance under PG&E's Rule 15.

PG&E's Answer

In answer to the complaint PG&E alleged, among other things, that the agreement between it and Crown was entered into pursuant to its gas Rule 15(E)(7), "Exceptional Cases." It also alleged that the Commission had authorized it to carry out the terms and conditions of the contract by Resolution G-1678, dated October 8, 1974.

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 "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."

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."

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 this case should be governed by our D.93189 in the Stanislaus case. Crown has alleged no facts which would compel a result different than the one we reached in Stanislaus. On the facts alleged by Crown, which are similar to those alleged, proved, and found in Stanislaus, we should 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 identical complaints, we will in the following order dismiss this complaint for the reasons stated in D.93189.²

² By letter of July 26, 1983, Administrative Law Judge Baer invited counsel for Crown to state reasons, if he had any, why Crown's complaint should not be dismissed based upon the Commission's decision in Stanislaus. No response has been received.

Findings of Fact

1. Crown has not alleged any facts which make its situation dissimilar to that presented in Stanislaus.

2. Dismissal of Crown's complaint 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 Crown's complaint.

2. The complaint of Crown should be dismissed.

O R D E R

IT IS ORDERED that the complaint in Case 10659 is dismissed.

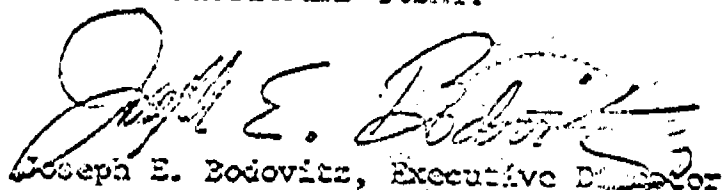
This order becomes effective 30 days from today.

Dated OCT 19 1983, at San Francisco, California.

LEONARD M. CRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. CREW
DONALD VIAL
WILLIAM T. SAGLEY
Commissioners

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


Joseph E. Bodovitz, Executive Director