

ORIGINAL

Decision 33420 AUG 18 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
Dr. Jack Y. Wong, Ph.D., dba Ryan )  
Paint Company, for an exemption, )  
pursuant to Public Utilities Code )  
Section 532, from the Pacific Gas )  
and Electric Company's electric )  
rate tariff as applicable to )  
applicant. )

Application 59457  
(Filed February 13, 1980)

Jack Y. Wong, Ph.D., for himself, applicant.  
Bernard J. Della Santa, Attorney at Law, for  
Pacific Gas and Electric Company, respondent.

O P I N I O N

Statement of Facts

Approximately 20 years ago one Clyde Ryan set up a small manufacturing facility in a 15-year-old building in Redwood City to manufacture specialty paints to be used for signs and outdoor advertising.<sup>1/</sup> The process followed involved a sequential rather than simultaneous use of various machines. Consequently, electric consumption was relatively low.

Following its practice, within three months of the time Ryan established service, Pacific Gas and Electric Company (PG&E) made a field load survey to determine the basis by which the new

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<sup>1/</sup> Today, according to Wong, there are only three plants in the United States, including his, making sign paint.

company should be billed. The field load surveyor found no polyphase motors connected. Thereafter, Ryan was billed for single-phase service. Primarily because of the sequential nature of the operations involved, electricity consumption continued low, averaging 800 to 900 kWh each month, and the Ryan plant electricity bills averaged \$40 to \$50, despite the fact that as time went on, and unbeknownst to PG&E, polyphase motors were connected. For reasons unknown today, but probably because the consistently low consumption triggered no signal, no further field surveys were made by PG&E.

In March of 1979, Dr. Jack Y. Wong, Ph.D. (Dr. Wong) purchased the paint company and leased the building. Service was transferred effective March 30, 1979 to Dr. Wong's account. This transfer of service routinely triggered another field load survey and in May 1979 the PG&E surveyor identified a polyphase-connected load of 58-1/2 horsepower. Accordingly, on May 15, 1979 PG&E established a new billing basis applying the polyphase service provisions of General Service Schedule A-1. On this schedule the minimum monthly charge for Ryan's 58-1/2 horsepower polyphase-connected load came to \$87.75.

Dr. Wong was not happy. Since taking over the paint company he had introduced conservation measures including turning off the plant's electric heater and the outside yard lights, and he had turned down or off the mixers and other equipment wherever possible in the various stages of the operation. Each month he had successively reduced electricity consumption until in September 1979 it had been brought down to 258 kWh. But then he received his PG&E bill which went, not down as he had expected, but up, based on the minimum monthly charge for his 58-1/2 horsepower.

Immediately Dr. Wong complained to PG&E. Again the field load surveyor was sent out to Ryan to recheck the plant closely. On his October 2, 1979 visit the surveyor identified 83-1/2 horsepower

of polyphase-connected load. Consequently, the Ryan electricity bill, based on the newly ascertained load of 83-1/2 horsepower went up to \$125.25 per month.<sup>2/</sup>

Dr. Wong conferred with PG&E, pointing out that although the 83-1/2 horsepower totaled 258.4 amps, his main switch was only rated for 200 amps so theoretically he could operate at about 80%. PG&E suggested he install a double throw switch which would serve to limit the connected load that could be operated at one time. But Dr. Wong rejected that approach when he learned that to rewire his plant would cost up to \$6,000 - and his lease would be up in two years.

In his application to this Commission Dr. Wong stated that he would be willing to agree in writing never to use more than 50% of his connected load at any single time. In response PG&E offered to establish a monthly minimum charge based on 40 horsepower provided Dr. Wong would agree that not more than the two largest polyphase motors (the 25 and 15 horsepower motors)

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<sup>2/</sup> This charge is calculated by applying the rate of \$1.50 per month per horsepower of polyphase-connected load in accordance with the polyphase service provisions of Schedule A-1. This schedule also provides for an energy cost adjustment (\$0.04063 per kilowatt hours at the time of hearing) to be added to each bill including bills for minimum charges.

would be operated at any one time. This would reduce the minimum charge to \$60 a month. Dr. Wong, while not rejecting this, wanted to go to hearing.<sup>3/</sup>

A duly noticed public hearing was held April 6, 1980 in San Francisco before Administrative Law Judge John B. Weiss. Both parties presented evidence, after which the matter was submitted.

PG&E pointed out again that its bills to Dr. Wong have been rendered in accordance with its filed tariff. There was no allegation made that PG&E violated the provisions of that tariff, nor was it shown that PG&E had violated any provision of law or any order or rule of the Commission. PG&E asserts that since Dr. Wong is really attacking the reasonableness of the charges provided by the tariff, but has failed to meet the requirements necessary to mount such an attack, his complaint, although cast as an application, should be dismissed as provided in Rule 9 of the Commission's Rules of Practice and Procedure and Public Utilities (PU) Code Section 1702.

Dr. Wong contends that his is a special situation; he never has required the minimum amount of energy he has been charged for, and the tariff in its present form does not provide incentive for him to conserve energy. He asks that a special deviation from the tariff be permitted in his circumstance, and that

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<sup>3/</sup> PG&E, recognizing Wong's dilemma, and in the interest of equity, remains willing to accommodate him by making a written agreement with Wong to bill him based on a minimum of 40 horsepower (the ratings of the 2 largest motors that would be operated at any one time - the 25 and 15 horsepower motors).

he be required to pay only for the actual energy used without regard for the minimum applicable to his connected polyphase load.

Discussion

At first consideration Dr. Wong's contentions might appear to have some merit. Having achieved results in his stringent conservation efforts through sacrifice and effort, it would now appear that he is being required to pay much more for less. But really most of the difference exists only because initially Dr. Wong received the same incorrect rate that Ryan previously had enjoyed in latter years after the polyphase motors were added without PG&E's knowledge. Merely because Ryan profited by PG&E's laxness in failing to monitor old customers is not sufficient reason why Dr. Wong should take over and continue to enjoy the windfall after the error is discovered. The fact that Ryan got away with it does not establish the wrong rate as being perpetual.

Because of the polyphase-connected load at Dr. Wong's plant PG&E must own, operate, and maintain capacity on standby to instantly serve this load any time Dr. Wong might choose to throw the switches. The fact that until now he has not had the need nor seen fit to use this standby does not mean that it was not there. The minimum charge set forth in Schedule A-1 is that found necessary to compensate PG&E for the costs of maintaining that standby energy in a constant state of availability. Who better should be required to pay for that capability than the one for whose benefit it is being maintained, whether or not it is used?

Bills have been rendered to Dr. Wong in accordance with PG&E's filed tariff. There has been no allegation or shadow of evidence produced in this proceeding that PG&E is violating its tariff in making the charge. Nor has there been any evidence that PG&E has violated any provision of law or any rule or order of

the Commission. Accordingly, the complaint (and although it was filed and couched in the form of an application, it is none the less a complaint) must be dismissed under applicable precedent (Nissen v Pacific Gas and Electric Co. (1963) 60 CPUC 663). In addition, since Dr. Wong questions the reasonableness of the charge imposed under a filed tariff, the complaint, not being signed by 25 or more actual or prospective consumers or purchasers of electricity, is deficient under the provisions of Rule 9 of our Rules of Practice and Procedure and PU Code Section 1702.

Findings of Fact

1. Prior to March 1979, Ryan Paint Company was receiving electrical energy at rates less than those which should have been applicable under provisions of PG&E's tariff Schedule A-1.
2. The error was ascertained and corrected following a routine field load survey after Dr. Wong took over Ryan Paint Company in March 1979.
3. Since May 1979 Ryan Paint Company has been correctly billed for its polyphase-connected load in accordance with the provisions of PG&E's applicable tariff Schedule A-1.
4. PG&E has proposed to Dr. Wong, as equitable accommodation for Ryan Paint Company's particular situation, a just and reasonable deviation from its tariff.
5. Dr. Wong fails to set forth any violation by PG&E of its filed tariff pertaining to the current Ryan Paint Company billings.
6. There is no evidence in these proceedings that PG&E is violating any provision of law or rule of this Commission.
7. The instant application (in reality a complaint) is deficient in that it does not include 25 or more signatures of actual or prospective consumers or purchasers of electricity.

Conclusion of Law

The instant application/complaint should be dismissed.

O R D E R

IT IS ORDERED that the application/complaint is dismissed with prejudice.

This order becomes effective 30 days from today.

Dated AUG 18 1981, at San Francisco, California.

*I concur:  
The basis of my  
concern in this order  
is that P & E continues  
to extend the accommodation  
referred to in paragraphs 3  
and 4 of part 4.  
Richard W. Gravelle*

*John E. Guyon*  
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President  
*Richard W. Gravelle*  
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*Edward M. Smith*  
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*William C. Calver*  
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*Frederic C. News*  
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Commissioners