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LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOHN DONALDSON, et al., Plaintiffs, v. CITY OF LONG BEACH, et al., Defendants.	Case No: BC251505 STATEMENT OF DECISION RE: MOTION FOR SUMMARY JUDGMENT

I

BACKGROUND

Defendants City of Long Beach, et al. ("Long Beach") move for summary judgment on ground that no triable issue exists. Opposing, Plaintiffs John Donaldson, et al. ("Plaintiffs") claim a factual dispute remains as to whether Long Beach's authorities abused their discretion in setting gas rates.

This case arises out of Long Beach's alleged violations of Long Beach City Charter § 1502 ("Charter") and Long Beach Municipal Code § 15.36.100 ("Code"). Plaintiffs allege Long Beach violated the Charter and Code by failing to set rates comparable to Southern California Gas's ("So Cal Gas") rates.

II

DISCUSSION

Summary judgment should be denied where a triable issue of fact exists. Cal. Code Civ. Proc. § 437c(c). Summary judgment "shall not be granted by the court based on inferences or evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact." Cal. Code Civ. Proc. § 437c(c).

A. Motion for Reconsideration

This case is governed by an abuse-of-discretion standard. February 4, 2003 Statement of Decision Re: Motion for Legal Determination ("Statement of Decision"), 3. Plaintiffs contend Long Beach's authorities abused their discretion by charging higher gas rates than those charged by So Cal Gas. Plaintiffs ask the Court to interpret the Charter and Code as requiring Long Beach's rates to mimic So Cal Gas's rates.

The Court deems Plaintiffs' request an improper Motion for Reconsideration. The Court already determined that "[t]he Charter and Code allow for rates based on those charged by more than one Southern California gas utility." *Id.* Consequently, Long Beach is not required to "set rates exclusively in accordance with So Cal Gas's rates." *Id.* at 2.[1]

B. Abuse of Discretion

In *City and County of San Francisco v. Boyd* (1943) 22 Cal.2d 685, to determine whether San Francisco abused its discretion in fixing wage rates, the California Supreme Court compared San Francisco's rates to rates prevailing elsewhere. Applying the Supreme Court's methodology here, this Court is not persuaded that Long Beach's rate-setting activities were "fraudulent or so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law." *Id.* at 690.

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[1] Some of Plaintiffs' evidence indicate that Long Beach has, in the past, modeled its rates after So Cal Gas's rates. *See, e.g.,* Deposition of Henry Taboada, 268. None of the evidence, however, compels the conclusion that Long Beach *must* model its rates after So Cal Gas's rates. Nothing in the language of the Charter and Code or legislative history is so explicit.

California law recognizes a presumption that rates established by entities possessing rate-setting authority are reasonable and lawful. *Hansen v. City of San Buenaventura* (1986) 42 Cal.3d 1172, 1180. The record before the Court does not overcome this presumption. First, nothing in the record indicates fraud on the part of Long Beach. Second, there is no evidence that Long Beach's rates were unreasonably and arbitrarily different from those charged by other gas utilities operating in Southern California.[2]

Long Beach's rate structure consists of two components: (1) a transportation rate, which remains fixed absent modification by a subsequent rate resolution; and (2) a cost rate, known as the "weighted average cost of gas" ("WACOG"), which varies directly as the gas price increases or decreases. Declaration of Sharon J. Margolies ("Margolies Declaration"), Ex. C at ¶¶ 13-14. During the relevant time period — December 2000 through May 2001 — the transportation rates of the four gas utilities remained similar. Long Beach's Undisputed Fact No. 14; *see also* Margolies Declaration, Ex. D at 1-2. The WACOG rates differed, however. So Cal Gas's January 2001 WACOG, for example, was nearly one dollar less than Long Beach's WACOG. Margolies Declaration, Ex. D at 1.

In Plaintiffs' view, differences between So Cal Gas's WACOGs and Long Beach's WACOGs demonstrate impropriety by Long Beach. Had Long Beach been required to model its rates after So Cal Gas's rates, Plaintiffs might have a claim. The conclusive refutation of Plaintiffs' reasoning is that Long Beach was *not* required to model its rates after So Cal Gas's rates. Statement of Decision, 2. By the clear, unambiguous language of the Charter and Code, Long Beach could lawfully base its rates "on those charged by more than one Southern California gas utility." *Id.* at 3.

Long Beach's WACOGs, though different from So Cal Gas's WACOGs, were in line with the WACOGs of Southwest and SDG&E. *See* Long Beach's Motion for Summary Judgment, 8; *see*

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[2] The other three gas utilities are So Cal Gas, Southwest Gas ("Southwest"), and San Diego Gas & Electric ("SDG&E").

also Margolies Declaration, Ex. D at 1-2.[3] For every relevant month, except January 2001, Long Beach's WACOG was lower than either or both. *Id.* at Ex. D. The thirty-cent discrepancy in January 2001 does not, on balance, render Long Beach's rates unreasonable or arbitrary.

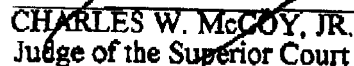
The Charter and Code provide that Long Beach's rates must be "reasonable and comparable to rates . . . charge[d] by other like utilities in the Southern California area." Code § 15.36.100. It was for Long Beach to decide what constituted a "like" utility. Statement of Decision, 3. On this record, no triable issue exists as to whether Long Beach abused its discretion in selecting like utilities in the given circumstances.

III

CONCLUSION

Long Beach's Motion for Summary Judgment is granted.

DATED: September 11, 2003



CHARLES W. McCOY, JR.
Judge of the Superior Court

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[3] Long Beach, Southwest, and SDG&E purchased gas at the California border, whereas So Cal Gas had "rights to a substantial amount of interstate pipeline capacity." Margolies Declaration, Ex. C at ¶¶ 4-5. When, in November 2000, gas prices at the California border increased, Long Beach was forced to "reluctantly pass[] on those higher prices . . . to its customers . . . ." *Id.* at ¶ 5. So Cal Gas, on the other hand, was not affected by the increases at the border. *Id.* at ¶ 4. In Long Beach's view, this accounts for the differences between So Cal Gas's WACOG and the WACOGs of Long Beach, Southwest, and SDG&E. Plaintiffs have not submitted evidence to the contrary.