North Dakota Law Review

Volume 29 | Number 1 Article 1

1953

Consumer Classes and Prices of Gas Utilities

Archie H. McGray

CONSUMER CLASSES AND PRICES OF GAS UTILITIES

ARCHIE H. MCGRAY*

I. THE CHICAGO CASE

BY what standards does a State Utility Commission, in fixing the rates to be charged for gas consumption, define the various classes of customers subject to such charges? And with what standards does an agency arrive at the different prices to be charged these classes by the utility? These basic problems of rate procedures were interestingly delineated by the Illinois Commerce Commission in a proceeding involving the Peoples Gas Light and Coke Company.[1]

The Peoples Gas Light and Coke Company is an Illinois corporation with its principal office in Chicago, engaged in the business of manufacturing, purchasing, distributing and selling gas within the city of Chicago. It is a "public utility" within the meaning §10 of the Illinois Public Utilities Act.

The *Chicago* case came before the Illinois Commission in October, 1949, when the utility filed various revised sheets of its effective rate schedule in which it proposed certain revisions in its rates, Charges and conditions of service that, among other things, would result in increased rates for gas sold in large volumes for industrial or commercial use on an interruptible off-peak basis, and for gas sold for gas motor service.[2] The initial

* A.B., LL.B., LL.M. Member of Minnesota and North Dakota bars.

1. In the matter of the Peoples Gas Light and Coke Company Revised Rate Schedule Sheets to Tariff Ill. C.C. No. 21, effective generally November 16, 1949, proposing increases in rates for gas sold in large volumes for industrial or commercial use on an interruptible or off-peak basis, Docket Number 37859 (mimeo.); hereinafter referred to as the Chicago case.

2. The rates in effect for Services Classifications Numbers 7, 9, 10 and 11 *relating to off-peak* service were as follows:

	Therms taken in any one month.	Charge	
	Service Classification No. 7		
For the first	1,000 therms	7.0	cents per therm
For the next	4,000 therms	5.0	cents per therm
For the next	5,000 therms	4.0	cents per therm
For all over	10,000 therms	3.0	cents per therm
	Service Classification No. 9		
For the first	130 therms or less	$7.80	
For the next	130 therms	5.0	cents per therm
For the next	9,740 therms	3.0	cents per therm
For the next	65,000 therms	2.0	cents per therm
For all over	75,000 therms	1.8	cents per therm
	Service Classification No. 10		
For the first	25,000 therms	3.0	cents per therm
For the next	25,000 therms	2.5	cents per therm
For the next	100,000 therms	2.25	cents per therm
For all over	200,000 therms	1.8	cents per therm
	Service Classification No. 11		
For the first	100,000 therms	2.4	cents per therm
For all over	100,000 therms	2.1	cents per therm

hearing was held later that month, the City of Chicago appearing specially, and certain off-peak and interruptible customers being represented by counsel. Subsequently these customers and certain other off-peak and interruptible customers filed motions for leave to intervene which were granted. Thereafter these customers filed intervening petitions objecting to some or all of the proposed revisions and offered evidence in support thereof.

Later, in January, 1950, the City presented a written motion for leave to file and intervening petition in the proceeding. In that petition the City took the postion that (a) both the existing rates and charges of the utility and the rates and charges proposed were unjust, unreasonable and discriminatory to the customers purchasing gas for general and residential uses, for commercial and industrial space-heating, for other heating operations and public street lighting purposes, and were preferential to customers purchasing gas in off-peak periods and on an interruptible basis; (b) to the extent that any gas was available for sale after the utility had supplied all requirements of its customers for residential and domestic use, and the requirements of other firm demand customers in the service classifications approved by the Commission, such gas should be regarded as a surplus commodity and should be sold at its fair value on a competitive basis with other fuels available for purchasers' uses, and the revenue from such sales

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The revised sheets filed by the utility provided, among other things, that these existing Service Classifications be combined into a new Service Classification Number 7, the proposed rates thereunder being as follows:

Therms taken in any one month.		Charge	
For the first	100 therms or less	$10.00	
For the next	200 therms	6.0	cents per therm
For the next	9,700 therms	4.0	cents per therm
For the next	65,000 therms	2.6	cents per therm
For all over	75,000 therms	2.5	cents per therm

The proposed changes in rates for Service Classifications Numbers 12 and 13 *relating to interruptible* service were as follows:

Service Classification No. 12	
Present (or Superseded) Rates	Proposed (or Revised) Rates
12.5 cents per million Btu	17.5 cents per million Btu
15 cents per million Btu	21 cents per million Btu
19 cents per million Btu	23 cents per million Btu
Service Classification No. 13	
19 cents per million Btu	24 cents per million Btu

The proposed changes in rates for Service Classification Number 8 *relating to gas motor service* were as follows:

For gas taken during the months of January, February, March, November and December:

Present or (Superseded) Rate	Proposed (or Revised) Rate
4.25 cents per therm	5.5 cents per therm

For gas taken during the months of May, June, July, August and September:

Therms taken in any one month		Present (or Superseded) Rate	Proposed (or Revised) Rate
For the first	1,500 therms	3.0 cents per therm	4 cents per therm
All over	1,500 therms	2.25 cents per therm	3 cents per therm

should be applied to a reduction in the rates and charges for gas sold on a firm demand basis; (c) the rates and charges for the various classes of service then in effect, if continued, and the revised charges proposed by the Company, if made effective, would be unjustly discriminatory; and (d) the rates and charges then in effect as to customers in Service Classifications Numbers 1, 2, 3 and 6 were excessive, unjust and unreasonable. The City requested a hearing and investigation by the Commission to the end that just and reasonable non-discriminatory rates for all classes of gas service might be fixed or established by order of the Commission.

This petition was denied by the Commission, but without prejudice to the right of the City to remain in the case at hand.[3]

Hearings were held before an examiner between October 25, 1949, and June 29, 1950, when the Commission heard final oral arguments. On August 16, 1950, an order was entered by the Commission directing that the proposed rates become effective with respect to all bills based on meter readings on and after August 31, 1950. Petitions for rehearing were then filed by the City of Chicago and several of the interruptible and off-peak intervenors, which petitions were granted October 3, 1950. The matter came on for rehearing before an examiner on October 23 and November 8, 1950, and on December 12, 1950, the Commission heard oral arguments and took the case under advisement.[4]

By reason of the evidence presented and the arguments made during the rehearing, the Commission deemed it appropriate to modify certain of the conclusions and findings contained in the order of August 16, 1950. This was accomplished by a new revised or modified order issued by the Commission January 11, 1951. In the new order, what had been the "present" rates became the "superseded" rates, and what had been the "proposed" rates became the "revised" rates.

The first issue on which evidence was presented by the utility and the intervening interruptible and off-peak customers involved the question of the fair value of the property of the utility used and useful in the public service, and the over-all return realized

3. On the same day, March 16, 1950, the Commission entered a citation order against the Company, Docket No. 38244, to provide for a general investigation of the entire rate structure of the utility in order to determine whether the existing classifications of the rate schedule then in effect should be revised, and whether the charges then existing for each class of service were just and reasonable, or should be increased, decreased or otherwise modified to the end that all of the rates of the utility might be just, reasonable and non-discriminatory. That proceeding is now pending before the Illinois Commerce Commission.

4. Technically, the case is still under "advisement."

thereon by the utility. However, in view of the citation issued in Docket Number 38244, for a general investigation of the entire rate structure of the utility and a determination of the reasonableness of its over-all earnings, the Commission concluded that such a determination in the *Chicago* case was unnecessary.[5]

Nevertheless, on this issue, the Commission made the following statement in its Order (p. 7):

> *"The evidence presented here, taken as a whole, did not show that an increase in interruptible, off-peak and gas motor rates over the level of the superseded rates was necessary to assure a fair return on the fair value of the Company's used and useful property.* Indeed, in the latter stages of the proceeding the Company did not seriously seek to justify the rate increases proposed in the revised sheets on that ground, but, rather, urged that the Commission should approve the revised rates irrespective of the Company's over-all return." (Italics supplied).

The resultant finding of the Commission (Number 8) reads:

> "The Company has not shown that under the superseded rates it was not earning a fair return on fair value or that its total revenues were insufficient to enable it to render adequate service . . ."

Although the Commission decided that a determination of the reasonableness of the over-all returns of the utility was unnecessary, the proposed increases were taken as presenting the question of their reasonableness when considered in the light of the rates then in force for all other classes of customers not to be affected by the proposed increases.

Under the then existing rates the gas customers of the utility were classified into four groups: (1) general customers, which in turn were divided into six sub-groups, but all being entitled to receive gas on a year-around basis under block rates varying among the sub-groups; (2) off-peak customers, receiving service only during certain designated periods in the year; (3) interruptible customers, the service of which could be cut off by the utility at any time on notice of thirty minutes to boiler fuel customers (Service Classification Number 12), and two hours to processing customers (Service Classification Number 13); and (4) the gas motor group, the rates of which vary seasonally.

During the year 1949, the average prices per therm paid by these various groups were found to be:

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5. Petitions to intervene in Docket No. 32844, referred to in note 3, *supra*, have been granted to the interruptible and off-peak customers represented in the instant proceeding.

1. General Customers
   - Residential, without space-heating ..... 12.67 cents
   - Residential, with space-heating 7.84
   - Commercial 8.87
   - Firm industrial 5.85
   - Commercial and industrial space-heating 7.57
   - Public street lighting 6.89
   - Average price paid by all general customers 9.49
2. Off-peak customers 2.19
3. Interruptible industrial customers 1.724
4. Gas motor customers 6.03

Percentagewise it was thus found that the average rate per therm for interruptible customers was only 13.6% of the average rate for residential customers without space heating; 22% of that for residential customers with space-heating; 29.5% of that for firm industrial customers; and 18.2% of that for all general customers. Further, the average rate for off-peak customers was only 17.3% of the average rate for residential customers without space-heating; 27% of that for residential customers with space-heating; 37.4% of that for firm industrial customers; and 23.1% of that for all general customers.

In the face of these differentials the Commission said (p. 9):

> "Without explanation these differences between the superseded interruptible and off-peak rates and the rates for other classes of customers would appear to constitute a violation of the Public Utilities Act. All customers, including off-peak and interruptible customers, buy substantially the same commodity, i.e., natural gas or a mixture of natural and artificial gas. The only important physical difference between the two is in thermal content, but the foregoing rate comparisons are in terms of rates per therm rather than per volumetric unit. *The Commission, therefore, is required to determine whether the foregoing differences in rates for a substantially similar commodity were unreasonably preferential and advantageous to the off-peak and interruptible classes of customers, and unreasonably discriminatory against some or all of the general customers, and whether the revised rates tend to eliminate any such discrimination.*"[6] (Italics supplied).

The character of the service provided to each group was the first factor considered by the Commission as warranting some

6. Quoted as applicable was the following, from §38 of the Public Utilities Act: "No public utility shall, as to rates or other charges, services, facilities or in 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. *No public utility shall establish or maintain any unreasonable difference as to rates or other changes, services, facilities, or in any other respect, either as between localities or as between classes of service. . .*" (Italics supplied).

variance between the rates charged to interruptible and off-peak customers and those charged to the general group of customers, the off-peak class receiving gas only during certain months of the year, and the interruptible customers being subject to curtailment of service when and if such service would increase demand beyond the existing capacity of the utility at any given time.[7] Both of these latter classes are therefore required to maintain standby facilities for conversion to other types of fuel to assure year-around operations. The general classes of customers, on the other hand, are all entitled to uninterrupted gas service throughout the year.

The Commission did not believe that this difference in character of service between the interruptible and off-peak groups and the general customers, although "entitled to some weight," was enough in itself to warrant the "great variance" that existed between the rates charged these classes of customers.

That *the cost* to the utility of providing interruptible and off-peak service was substantially less than the cost of providing gas service to the general customers was considered as the principal argument of the intervenors in support of their contention that the existing disparity in the group rates be continued. The interruptible intervenors first contended that the *net* cost incurred by the utility for the purchase of gas it received from its supplies (the Chicago District Pipeline Company) on an interruptible basis during the year 1949 was only .256 cents per therm. This they computed by taking $3,063,457—the total commodity charge incurred by the utility in the purchase of interruptible gas (214,874,859 therms) for the year 1949—and substracting therefrom $2,513,063, the total "net credit adjustment" allowed to the utility by its supplier during that period for all so called premium gas, or gas nominally allocated to the Peoples Company but actually taken by some other distributor or distributors. The interruptible and off-peak intervenors also contended that even if no allowance were made for credits for premium gas, the disparity between the existing gas rates for interruptible and off-peak customers was justified by reason of the differences in costs incurred by the utility in providing service to each of these groups.

7. Only one interruptible intervenor (a meat packing company) offered specific testimony as to the number of occasions on which curtailment of interruptible gas service had actually occurred during recent years. This intervenor showed that during the month of January, 1950, its gas service was cut off completely for two full days and curtailed "from 50% to 75% for about twelve more days," and that its gas supply had been "greater" in March than in January and February, and that in April its curtailment had been "somewhat greater" than in January or February.

Three other distributing companies, in addition to the Peoples Company, are supplied by the Chicago District Pipeline Company, a wholly-owned subsidiary of the Peoples Company, and the provisions covering the allocation of interruptible gas to the four distributors are set forth in the existing tariffs of the Chicago District Pipeline Company on file with the Federal Power Commission, effective October 1, 1949. These tariffs provide that the aggregate amount of gas available for sale by the Chicago District Pipeline Company, shall, *each day*, be nominally allocated to each of the four distributors in proportion to their respective maximum demands for firm service. If the total requirements for a distributing company on any one day are such that it is not in prospect of using all of its nominal allocation, Chicago District Pipeline is obligated to deliver such remaining gas or "surplus" to any other distributor whose interruptible service deliveries are in prospect of being curtailed on such day. Also, if on any day a distributor is in prospect of selling interruptible gas for boiler fuel, when another distributing company has insufficient gas under its nominal allocation to meet its interruptible processing requirements (the latter company's interruptible boiler fuel deliveries having been completely curtailed), the supplier, the Chicago District Pipeline Company, is obligated to curtail deliveries for the former company's interruptible boiler fuel purposes to the extent necessary to supply the interruptible processing requirements of the latter distributor. Any distributing company acquiring interruptible gas under this arrangement from amounts nominally allocated to another distributor pays the Chicago District Pipeline Company a "premium" of .9 cents per therm for such gas, in addition to the usual commodity charge. This "premium" received by the Chicago District Pipeline Company is then credited, in effect, to the distributor to which such "surplus" gas was nominally allocated.[8]

In regard to this premium feature the Commission said (p. 12):

> "There is nothing this arrangement which required a finding that 'premium' gas credits received by the Company are to be applied to reduce the costs of furnishing service to interruptible customers only. Those credits are relevant only to the total cost of natural gas to the Company."

The interruptible intervenors claimed that the cost to the

8. Apparently, this device was adopted to facilitate the adjustment of accounts between the Chicago District Pipeline Company and its customer distributing companies, and also to achieve maximum flexibility in the distribution of gas not required to meet firm demands throughout the territory they serve.

utility of providing their service, exclusive of the cost of the gas itself, was only .054 cents per therm during 1949, including a 7% return on the utility's investment in *facilities devoted solely to interruptible service.* The off-peak intervenors contended that the cost to the utility of their service, similarly computed, was only .16 cents per therm. Both classes of intervenors urged that by reason of the substantial margin between such "costs" and the superseded rates for interruptible and off-peak service, an increase therein was not warranted.

In reply to these contentions the Commission observed (p. 12):

> "These figures, however, reflect only a portion of even the incremental costs of providing service to the interruptible and off-peak customers. *For the Commission to have used incremental cost figures as a standard to judge the reasonableness of the superseded rates to these customers would have been manifestly unfair to the general customers of the Company.*" (Italics supplied).

Continuing on the cost relationship between the utility customer classes the Commission remarked (p. 13):

> "The demand created by the general customers in the Chicago area originally made feasible the construction of the facilities used to produce and gather the gas from the fields in southern areas of the United States and the construction of the pipelines used to transport it to Illinois.[9] It is probable that the satisfaction of this demand in the Chicago area could never have been accomplished without the existence of the distribution facilities of the Company. Thus, had there been no such distribution facilities there would probably be no natural gas available in the Chicago area at all at the present time."

Furthermore, the Commission added,

> "Without the continued presence of the general customer market, the off-peak and interruptible customers would not be able to obtain natural gas at prices as low as either the superseded or the revised off-peak and interruptible rates. In that event the customers now taking gas on an interruptible or an off-peak basis would be able to buy natural gas, if at all, only at a price which would reflect the entire expense of production, gathering, transmission and distribution of the gas."

Consequently, the Commission concluded that,

> "*Since the interruptible and off-peak customers are par-*

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9. On this point, the following findings of the Commission are of interest:

"(10) as of December 31, 1949, there were approximately 927,000 general customers and as of June 30, 1949, there were 504 off-peak customers, 8 interruptible customers and 19 gas motor customers;

"(12) in the year ending December 31, 1949, the general customers purchased 420,574,455 therms of gas, the off-peak customers 96,113,135 therms, the interruptible customers, 214,701,061 therms and the gas motor customers, 134,438 therms;"

ticipating in the benefits afforded by the availability of gas service in Chicago, they must bear with the other customers a reasonable share of the total costs to the Company of providing such service and of continuing to furnish it. It is true that some variation in the rates to the three groups of customers is justified because of the fact that interruptible and off-peak customers on the average purchase gas in much greater volume per customer than do general customers, with resulting economies to the Company in the servicing of these large-volume customers, and also because of the . . . differences in the character of service afforded each of the three groups of customers. After considering these facts, however, in relation to . . . the great differences between the general customer rates and the superseded interruptible and off-peak rates, as well as all other evidence in the record bearing on this issue, the Commission concludes that under the superseded rates the interruptible and off-peak customers were not bearing a reasonable share of the Company's total costs providing gas service and that those rates were, therefore, discriminatory." (Italics supplied).

Having concluded that the then existing rates were discriminatory, the Commission next turned to the problem of determining whether the proposed rates were just, reasonable and nondiscriminatory as to all the customers concerned. Viewing the proposed or revised rates from the interruptible and off-peak customers' standpoint, the Commission observed that under the revised rates the average cost of gas to the interruptible group would be 2.21 cents per therm, and that the average cost of gas to the off-peak group would be 2.88 cents per therm, based on the 1949 levels of purchases.

"Thus, the revised interruptible rates will average only 17.4% of the average rate for residential customers without space-heating; 28.9% of that for residential customers with space-heating; 37.8% of that for firm industrial customers; and 23.3% of that for all general customers. The revised off-peak rates will average 22.73%, 36.73%, 49.23% and 30.35%, respectively, of those for the other specified groups." (p. 14).

In deciding that the revised rates were reasonable as to the interruptible and off-peak groups, the Commission said:

"After considering the . . . differences in the character of service afforded to, and differences in the average volume of gas purchased by, interruptible, off-peak and general customers in relation to the foregoing figures showing vast margins between the general customer rates and the revised interruptible and off-peak rates, as well as all other evidence in the record bearing on the issue, *the Commission concludes that under the revised rates the interruptible and off-peak*

customers are not contributing more than a reasonable share of the Company's total costs of providing gas service." (p. 14. Italics supplied).

From the standpoint of the other customer groups served by the utility, on the question of whether the proposed rates were high enough to meet all costs incurred by the utility in serving the interruptible and off-peak classes which would not be incurred if such classes were not served at all, the Commission summarily concluded that the proposed rates were high enough, there being no evidence to show that they were not sufficient to meet such costs.

Also from the standpoint of the other customer groups served by the utility, it was considered essential to ascertain that the proposed rates were not so high as to preclude maximum revenues from the sale of available gas on an interruptible and off-peak basis.[10]

Although the attorneys for certain of the interviewers made the contention that consideration of the use of alternate fuels by the interruptible and off-peak groups would be contrary to the law of Illinois and invalid, the Commission took the position that since such groups must maintain standby equipment for conversion to other fuels, they would continue to purchase gas only if the proposed rates were at such a level that it would be economically advantageous for them to use other fuels. The Commission concluded, therefore, that

"the rates for these classes of service should not be higher than comparable costs of alternative fuels."[11] (p. 16).

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10. It will be remembered that gas sold on this basis is gas which the capacity of the utility makes available when the firm demands of the general customers do not require it. Since the general customers are the ones who bear the bulk of the service costs, they are benefited to the extent that the utility maximizes its revenues from sales without increasing the peak demand; because, as the utility's load factor is improved, the average unit cost of gas is reduced.

11. Evidence offered on costs of alternative fuels was summarized in the order of the Commission substantially as follows:

There was some variance between the prices being paid by the different interruptible and off-peak customers for coal and fuel oils. Five interruptible intervenors offered testimony on the subject which showed that their average costs per therm for alternative fuels during 1949 were:

Intervenor	Gas	Coal	Oil
No. 1.	1.54 cents	2.9 cents	6.45 cents
No. 2.	1.9	3.1	-- --
No. 3.	1.9	-----	4.7
No. 4.	1.9	-----	3.9
No. 5.	1.9	1.9	-----

Testimony offered on behalf of forty off-peak customers indicated that although there were marked variations in the prices at which these customers purchased coal and oil, the prices of these alternative fuels, in each case, were above the proposed gas rates for such group and could reasonably be expected to remain above such proposed rates. For example, in 1949 a business and professional men's club paid an average price of 4.37 cents per therm for coal that it used during such period. Under the proposed gas rate applicable to this club, its cost for gas would be 3.35 cents per therm. A hotel that paid an average of 3 cents per therm for coal during 1949, under the proposed gas rates would

Except for one intervenor with an unusually favorable coal purchase contract under which such interruptible customer could buy coal at a price comparable to the existing gas rate; the Commission decided that under all the circumstances the proposed gas rates were below the level at which it would be economically advantageous for the interruptible and off-peak customers to turn to other types of fuel.[12]

The remaining rate question raised by the proposed increases related to Service Classification Number 8, covering gas motor service. Although permitting such group to use gas throughout the year, this classification was designed with the obvious intention of encouraging consumption of gas by the group affected during off-peak periods. Monthly sales to these customers during the off-peak periods were shown to be roughly twice the quantity of sales to the same customers during the peak-period months. As none of the nineteen gas motor users had intervened to oppose proposed increases, the increases in this classification were upheld by the Commission as "consistent with the increases authorized in other off-peak rates."[13] (p. 19).

As has been noted, the proposed revision included a consoli-

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be subject to a price therefore of 2.85 cents per therm.

Evidence offered by witnesses for the utility showed that 86 laundries were using off-peak gas. Of these, 34 that had used coal as an alternative fuel at an average price of $9.50 per ton had realized an annual average saving of about $3,480 under the existing or superseded gas rate schedule and would realize an annual average saving of about $2,325 under the proposed or revised rates for gas. Thirty-four other laundries which had used a "No. 6" oil as an alternative fuel at an average price of 6.25 cents per gallon had realized an average saving of $2,900 per year under the existing rates for gas and would realize an average saving of about $1,685 per year under the proposed rates. The remaining eighten laundries that had used a "No. 5" oil as an alternative fuel at an average price of 7.5 cents per gallon, had realized an average saving of $1,700 under the existing rates and would realize an average annual saving of about $970 under the proposed rates for gas.

It will be observed that only one of the parties (Intervenor No. 5, above) was able to show purchases of an alternative fuel at a rate comparable to the existing gas rate. This was made possible by reason of an unusually favorable contract for the purchase of coal not likely to be repeated or duplicated.

12. If the proposed rates in the two highest price categories of Service Classification Number 12 had been depressed sufficiently to meet the coal price available to this one interruptible intervenor, the Commission was of the opinion that the net loss to the utility would be greater than its net loss if it were to lose the business of this one customer.

13. On the general effect of the proposed increases on the classes concerned, the Commission made these findings:

"(4) under revised Service Classification No. 7, the customers formerly receiving off-peak service under superseded Service Classifications Nos. 9, 10 and 11 are required to pay higher rates than they were formerly paying for such service, and the customers who were receiving off-peak service under superseded Service Classification on No. 7 pay slightly lower rates than they were formerly paying;

"(5) under revised Service Classification No. 7 the customers formerly receiving off-peak service under Service Classification No. 9 are required to pay a higher minimum monthly charge than they were paying for such service, and the customers formerly receiving off-peak service under superseded Service Classifications Nos. 7, 10 and 11 pay a lower minimum monthly charge than they were formerly paying;

"(6) under revised Service Classification Nos. 12 and 13 the rates for all interruptible gas service customers were increased;

"(7) under revised Service Classification No. 8 the rates for all gas motor service customers were increased;"

dation of the then existing Service Classification Numbers 7, 9, 10 and 11 relating to off-peak service into one schedule designated as Service Classification Number 7, and which would effectuate a shortening of the period during which the utility would be required to furnish gas to certain of the off-peak customers. Under the superseded schedule, the off-peak service periods provided by the various Service Classifications were: No. 7, March 16 to November 15, both dates inclusive; Nos. 10 and 11, April 1 to October 31, both dates inclusive; and No. 9, under which most of the off-peak customers had been served, from April 16 to October 15, both dates inclusive. The revision provided that for all off-peak customers the utility would be required to supply gas between April 16 and October 15, both dates inclusive; and that, at its option, the utility could also furnish gas to such group between March 16 and April 15, and between October 16 and November 15, all dates inclusive. The reason for this proposed change was the fact that experience had proved the old service classification periods had not properly anticipated peak loads. Consequently the Commission sustained this proposal, declaring:

> "Shortening of the periods of service required for customers in those classifications was therefore warranted in order to lessen the possibility that the company may be called upon to provide service at off-peak rates at times when firm demand approaches the peak." (p. 19).

The intervening boiler fuel customers objected to the establishment of the proposed service priority that the revision would obtain for the interruptible processing customers by reason of the differential of one cent between the rate of 24 cents per million British thermal units applicable to such processors under proposed Service Classification 13, and the rate of 23 cents per million British thermal units applicable to boiler fuel customers in the highest bracket under proposed Service Classification 12. The basis of this objection was the fact that under the then existing rate schedules, interruptible processors paid the same rate as that applicable to the highest price category for interruptible boiler fuel users, neither class having any service priority over the other except that processors received a two-hour notice of shut-off rather than the 30-minute notice given to boiler fuel users. However, as has been noted, the tariffs of the Chicago District Pipeline Company, the supplier of the Peoples Company, contained provisions establishing a service priority in favor

of processors on such occasions as required a readjustment of the quantities of gas for interruptible customers nominally allocated to the four distributing companies served by it. In resolving the problem, the Commission made this comment in regard to the possible result of the existing tariffs of the Chicago District Pipeline Company upon the Peoples Company operating under its existing schedules:

> "There may be situations arising under this tariff provision in which the imposition upon Peoples Company of a requirement of parity shut-off between processing customers and highest bracket boiler fuel customers would have an undesirable effect. Thus, if the demand by firm customers on a given day should be so high as to take all of the Company's nominal allocation of gas, and yet another distributing company served by Chicago District Pipeline Company should on that day have a surplus of gas available from its nominal allocation after serving all its firm customers and interruptible processing customers (but not its interruptible boiler fuel customers), Peoples Company would be eligible for such surplus gas only for purposes of satisfying its processing fuel requirements. In such a case the Company's inability to shut off the top bracket boiler fuel customers would prevent it from obtaining additional gas." (p. 18).

The Commission concluded that:

> "The establishment of a priority of shut-off in favor of processing customers * * * appears to have been necessary in order to enable the Company to operate in compliance with the provisions of the Chicago District Pipeline Company tariff, and at the same time to obtain a maximum supply of gas for its customers. This being so, it is proper that processing customers be charged a higher rate than boiler fuel customers, as is provided in the revised schedules for Service Classifications 12 and 13 filed and approved herein." (p. 18).

Under all these circumstances, the general conclusion of the Commission concerning the revisions was,

> "that the revised rates, charges and conditions of service applicable to interruptible, off-peak and gas motor customers heretofore made operative by the order entered herein on August 16, 1950, are just, reasonable and non-discriminatory." (p. 20).

Disposition of the increased revenues that it was anticipated the utility would receive under the proposed rates as approved created another problem in view of the possibility that the general investigation into the utility's rates and revenues initiated by the proceeding designated Docket No. 38244 [14] might reveal the over-

14. See note 3, *supra*.

all earnings to be above a reasonable level. The Commission resolved the problem in this way. The record showed that a subsidiary of the Peoples Company had embarked on a program for the construction of an additional pipeline from the gas fields of Texas to Joliet, Illinois, which was designed to increase substantially the supply of gas available to the customers of the Peoples Company in Chicago, and the initial cost of which was estimated at $120,000,000. The record also showed that the Peoples Company was intended to carry a major part of the burden of providing the necessary equity capital for the expansion project, having already obtained authorization from the Illinois Commission to do so up to the date of the modified order. The Commission, therefore, said this in its order:

"Integrating this large additional supply of gas with the existing supply for the maximum improvement in service to its customers will require expenditures for certain non-recurring expenses. The major portion of these expenses probably will have been incurred between the date of the original order herein and the time the Commission can render an opinion in its investigation into the affairs of this company. It was, therefore, proper for the Commission to order an appropriation of the increased return resulting from the rate increases approved by this order, net of taxes paid on such increased return, to a special reserve for the purpose of meeting the special non-recurring costs of integrating the new supply of gas into the service of the Company's customers, and thereby reduce to some extent any additional charge to customers that might otherwise result in connection with the furnishing of such increased supply of natural gas. This required the concomitant provision that whenever the Company shall record the actual expenses incurred for this purpose in the appropriate expense account, it shall at the end of each month charge the reserve hereby created and credit current income with the amount of such expenses actually incurred net of taxes saved thereby, until such reserve is exhausted. It also required a provision that in the event that the expenses actually incurred do not exhaust the reserve, the remaining balance will be disposed of as the Commission may, in an appropriate proceeding, approve or direct, to provide for other special charges properly amortizable over a future period which, were

it not for the reserve hereby created, would necessarily be met out of future revenues to be provided by rates."[15]

II. Summaries

To summarize at this point, the following principles may be deduced from the Chicago case:

1. Although a utility may not be able to show that under its effective rate schedule it is not earning a fair return on fair value or that its total revenues are not sufficient to enable it to render adequate service, such a utility may properly file a revised schedule proposing increases in the rates charged to certain classes of its customers and the State Utility Commission concerned may properly consider the question of the reasonableness of such proposed increases when weighed in the light of rates in force for the other classes of the utility's customers for the purposes of determining: (a) whether the existing price differentials for a substantially similar commodity are unreasonably advantageous to the classes whose rates would be raised under the proposed schedule and unreasonably discriminatory against some or all of the other classes of the utility's customers; and (b) whether the proposed rates would eliminate any such unreasonableness that might be found to exist in the effective rate schedule.

2. Where one class of gas customers may be entitled to utility service only during certain months of the year, and a second class may be subject to curtailment of gas service when and if such service would increase total demand beyond the capacity of the utility at any given time, thus necessitating such classes to maintain their own standby facilities, while a third class of customers is entitled to uninterrupted gas service throughout the year, a difference in the character of utility service exists sufficient to warrant some variance in the rates charged the first mentioned classes and those charged the third class of customers mentioned.

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15. This part of the order of the Commission was supported by the following findings:

"(28) a reasonable estimate of the effect of the revised rates is that they will increase the net income of the Company before taxes by approximately $1,841,000 on an annual basis;

"(29) the company has embarked on a program designed to increase substantially the supply of gas to its customers as well as to other customers in northern Illinois, and this program is likely to entail special non-recurring costs of integrating the Company's gas supply for service to its customers;

"(30) pending completion of the Commission's investigation of the reasonableness of all the rates, charges and service classifications of the Company in Docket No. 38244 the Company should be required to appropriate the increase in income resulting from the proposed rate increases, net of taxes payable on such increase, to a special reserve to meet special non-recurring costs of integrating the supply of gas for the service of the Company's customers, or for such other purposes as the Commission in an appropriate proceeding may approve, and to report the use of said reserve."

3. Where one class of gas customers may be entitled to utility service only during certain months of the year, and a second class may be subject to curtailment of gas service when and if such service would increase total demand beyond the capacity of the utility at any given time, while a third class of customers is entitled to uninterrupted gas service throughout the year, it would be unreasonable to the latter class to charge the former classes with only the incremental costs of the service provided them, and it is, therefore, reasonable to allocate to such former classes a share of the total costs of the utility incurred by the service to all the classes of customers.

4. Where one class of gas customers may be entitled to utility service only during certain months of the year, and a second class may be subject to curtailment of gas service when and if such service would increase total demand beyond the capacity of the utility at any given time, while a third class of customers is entitled to uninterrupted gas service throughout the year, a schedule of rates under which the average charges for the first mentioned class would be only 30.35% of the average charges for the third mentioned class, and under which the average charges for the second mentioned class would be only 23.3% of the average charges for the third mentioned class is reasonable as to such first and second classes and does not discriminate against them.

5. Given the utility customer classifications described in the preceding paragraphs and the facts there set forth, the question of whether the proposed increased rates would be high enough to meet the costs incurred by the utility in serving the interruptible and off-peak classes which would not be incurred if such classes were not served at all, becomes academic and need not be decided in the absence of evidence to show that the proposed increases would not be sufficient to meet such costs.

6. Given the utility customer classifications described in paragraph 2, above, with two of such classes required to maintain standby equipment convertible to the use of other fuels, evidence of the cost of the alternative fuels available to such classes is relevant on the question of the reasonableness of the rates chargeable to all of the classes of customers served by the utility, and the rates to be charged the customers maintaining standby facilities should not be higher than the comparable costs of such alternative fuels.

7. Where a utility proposes to increase the rates charged three

of its four classes of customers, the three classes directly affected being interruptible users, off-peak users, and gas motor users entitled to service throughout the year but subject to a rate schedule designed to encourage consumption by them during off-peak periods, it is proper to sustain the proposed increases for the gas motor class as consistent with the increases proposed for the interruptible and off-peak users, such latter increases having been determined as reasonable, and no gas motor user having appeared in opposition to the proposed increases for the gas motor class.

8. Where a gas utility is serving a general class of customers entitled to service throughout the year, and a class of off-peak customers entitled to service only during such period of the year as the firm demand of the general customers is relatively low, it is reasonable to further shorten the periods of service to the off-peak class in the light of experience showing that this will result in lessening the possibility that the utility may be called upon to provide off-peak service at times when firm demand is high.

9. Where four gas distributing companies are supplied by a single pipeline company whose tariffs provide for a daily allocation of the supplier's total volume among the distributors on the basis of the demand of their general customer classes, and any amount not required by a distributor on such basis for any one day is then made available to the remaining distributors by the pipeline company, and the shut-off priorities of the pipeline company favor the interruptible processing customers of the distributors as against their interruptible boiler fuel customers in the making of such daily reallocations of the available supply, it is reasonable and proper to allow a distributing company a rate schedule adjustment so as to extend the benefit of such shut-off priority to the distributor's interruptible processing customers and against the distributor's interruptible boiler fuel customers, thus enabling the distributing company to become eligible for gas that might otherwise be denied such distributor; and it is also proper, in such a case, that the interruptible processing customers be charged a higher rate than the interruptible boiler fuel customers.

Was it proper for the Commission to raise the rates charged to three of the four classes of customers served by the utility in view of the fact that the current revenue of the utility was found to be reasonable? It is of course elementary that a utility is entitled to a fair return on the fair value of its property used in service to

the public, but no more than that.[16] It is also recognized that there is a constitutional minimum and a constitutional maximum within which "zone of reason" varying rates may properly be set.[17] Therefore, having initiated an investigation of the entire rate structure of the utility for the purpose of determining the reasonableness of the over-all earnings, and being faced with the mandate of §38 of the Public Utilities Act that "no public utility shall establish or maintain any unreasonable difference as to rates or other charges, services, facilities, or in any other respect, either as between localities or as between classes of service," and having found such an unreasonable difference to exist in favor of the three classes of customers concerned, it would seem that the Commission had no alternative but to order the increases necessary to bring the rate schedule of the company into compliance with the law, in the absence of a finding that the over-all earnings of the utility were unreasonably high.[18] The point is apparently unique, as a search of the *Public Utilities Report* failed to disclose a case involving this precise issue, nor is any such case cited in the briefs and arguments of counsel.[19]

The difference in the character of service available to the general, interruptible and off-peak classes of gas customers is generally recognized as a sufficient basis for justifying different rates for such classes, but as the Supreme Court of Texas has put it, "There is no rule of thumb by which to determine whether the conditions of utility service are similar or dissimilar. It is a question of fact to be determined from the testimony in each case."[20] It is also generally recognized that each class must bear an equitable portion of the costs of service including the reasonable return to which a utility is entitled. The Illinois Commission has stated that principle thus: "So long as the business obtained from a given class of customers result in a profit and does not

16. Smyth v. Ames, 169 U.S. 466 (1898).
17. Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944).
18. The applicable provisions of §32 of the Illinois Public Utilities Act read: "All rates or other charges made, demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or for any service rendered or to be rendered *shall be just and reasonable.* Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful."
19. Three briefs or arguments were available: one filed for the company by Daily, Dines, White and Fielder, and Wilson and McIlvaine; another by Gladson, Staley, Bembick and Sawyer, "attorneys for certain intervenors;" and a memorandum in support of oral argument filed by Knapp, Cushing, Hershberger and Stevenson, "attorneys for certain intervenors," hereinafter referred to respectively as the Company, the Gladson and the Knapp briefs.
20. P. S. Ford v. Rio Grande Valley Gas Co., 141 Tex. 525, 174 S.W.2d 479, 52 P.U.R., N.S. 404 (1943) (natural gas involved).

increase the cost of rendering service to other classes, unlawful discrimination cannot be said to exist."[21]

The reasonableness of the increased rates as to the interruptible and off-peak users is substantially supported by the following figures taken from the Company's exhibits and brief. The total cost of the utility's gas operation for 1949 was $39,484,258. On

21. Illinois Coal Operators' Association v. The Peoples Gas Light and Coke Co., 7 P.U.R., N.S. 403 (1934). The principle has been applied by other Commissions in the following cases.

Alabama Public Service Commission: Re Muscle Shoals Gas Co., P.U.R. 1927 D 804, schedule of rates should equitably distribute among all classes of customers the cost of service; Re Birmingham Gas Co., 51 P.U.R., N.S. 445 (1943), holding contrary to public policy a surcharge upon certain industrial customers not using purified gas the proceeds from which were to be used to furnish purified gas to another class of customers.

California Railroad Commission: Re Los Angeles Gas & Electric Corporation, P.U.R. 1917 F 717, "it has been found not only just, but wise, to impose on every service, however small, some contribution to the upkeep and maintenance of the system;" Re Southern California Gas Co., P.U.R. 1918 A 604, in which a rate was held unreasonable as grossly inadequate to pay the cost of the service; Kilpatrick's San Francisco Bakery v. Pacific Gas & Electric Co., 33 P.U.R., N.S. 298 (1940), involving natural gas in which it was said that "surplus gas rates provide for the increment cost of rendering the service plus whatever additional revenue competitive fuels permit."

Connecticut Public Utilities Commission: Re Connecticut Light and Power Co., 69 P.U.R., N.S. 126 (1947), holding that "a minimum charge should recoup at least the direct costs of service;" and Re Derby Gas & Electric Co., 75 P.U.R., N.S. 114 (1948), in which it was said that "the rates which the company charges its industrial customers should be above cost and compensatory."

Georgia Public Service Commission: Re Georgia Power Co., P.U.R. 1929 B 309, correcting a minimum charge that permitted some customers to obtain service at the expense of others; Re South Atlantic Gas Co., 76 P.U.R., N.S. 380 (1948), similar.

Indiana Public Service Commission: Re Northern Indiana Public Service Co., 78 P.U.R., N.S. 63 (1949), correcting a minimum charge that was less than the cost of supplying minimum users.

Kansas Public Utilities Commission: John M. Landon v. City of Lawrence, P.U.R. 1915 E. 763, discontinuing the furnishing of so-called "free gas" to municipalities in exchange for street use by the utilities, and where it was said that, "the furnishing of gas under such conditions certainly compels those consumers who pay stated prices to bear a public burden which could equitably be borne by all the taxpayers of the city. The price of the gas consumed by the city is paid by those only who use gas in the city and pay for it at certain rates. The burden of taxation is, thus, unequally imposed." The Commission also approved a minimum charge on the ground that, "the utilities have invested large sums in the equipment necessary to render the service, whether demanded or not during any specified period; and the consumer should, whether he demands the service or not, be required to bear a portion of this burden."

Massachusetts Department of Public Utilities: Re Boston Consolidated Gas Co., 14 P.U.R., N.S. 433 (1936), in which it was said that a rate should not be disapproved, "unless it appears clearly that the sale of gas under the rate will throw a burden upon other customers to whom the rate does not apply;" Re Boston Consolidated Gas Co., 30 P.U.R., N.S. 260 (1939), holding that the convenience or incidental user must pay an equitable portion of the cost of supplying him; Re Haverhill Gas Light Co., 33 P.U.R., N.S. 288 (1940), in which a promotional type of gas rate schedule was required to contain a charge for a minimum quantity of gas sold which would closely approximate the amount which the company was required to spend to cover the expense of serving the average customer; Re Boston Consolidated Gas Co., 70 P.U.R., N.S. 1 (1947), where it was said that, "the company should not expect to earn the same rate of return on its total investment when it becomes so deeply involved in the heating business, since the other users cannot be expected to bear any part of the burden of the low rates forced by competition with other fuels in this field;" and Re Old Colony Gas Co., 75 P.U.R., N.S. 47 (1948), in which a special contract rate was revised upward, such rate being below the utility's basic average cost of purchased gas after adjustment for unaccounted-for gas.

Missouri Public Service Commission: Re Laclede Gas Light Co., P.U.R. 1929 A 561, "We find no fault with the company in trying to promote its business but every class of consumer should bear its just share of carrying on the business, as well as its share of promoting the business." It was also said, "The sum of the individual demands of the customers in any one class produce the total demand made by that class on the distribution system. With that information for each class the distribution system can be allocated to the various classes of consumers, and from that the part that each customer

the basis of actual sales, the interruptible customers took over 29 percent of the total gas sold by the company during the year. If the interruptible customers had been charged costs in proportion to their consumption, they would have been required to pay more than $11,450,000. They actually paid $3,701,986, or less than one-third of the costs chargeable to them on the basis of their consumption. Had the approved increase been in effect, they still would have paid a total of only $4,849,602.

Similarly, the off-peak customers used more than 13 percent

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should bear;" Re Missouri Power & Light Co., 72 P.U.R., N.S. 249 (1947), holding that the rates to any one customer should not be judged merely by a return upon the investment of the utility used to serve such customer, but that the entire system should be considered, and that a rate preference to a contract holder was discriminatory where it could lead to an increase in the general class rates.

Montana Public Service Commission: Public Service Commission of Montana v. Billings Gas Co., P.U.R. 1933 D 337, "The industrial schedule of rates contemplates that the users thereunder will bear a part of the fixed costs; on the face of it, the arrangement does not appear to be unreasonable;" Re Billings Gas Co., 1 P.U.R., N.S. 259 (1933), "The majority of cases take the view that the furnishing of free or reduced rate service to public schools constitutes an unlawful discrimination against the ratepayers by imposing upon the rate payers a burden that should be borne by the taxpayers."

New Jersey Board of Public Utility Commissioners: Re Jersey Central Power & Light Co., 66 P.U.R., N.S. 129 (1946), in which it was held that where a gas company was not recovering the cost of service from large volume users such as space-heating customers an upward revision was required.

New York Department of Public Service, State Divison, Public Service Commission: Customers for Gas in the 31st Ward, Borough of Brooklyn v. Brooklyn Borough Gas Co., P.U.R. 1929 D 433, in which was stated the principle that a rate system that relieves an individual consumer directly and solely imposed by him and that passes the deficiency thus created on to other consumers is unjustly discriminatory; Re Rochester Gas & Electric Corporation, P.U.R. 1921 A 415, in which the service charge principle was approved; Re Rochester Gas & Electric Corporation, 33 P.U.R., N.S. 393 (1940), where, at p. 522, it is said that a gas company, in order to prove that space-heating and industrial businesses are not a burden on the other classes of customers, must demonstrate that the revenue from such class of service exceeds the out-of-pocket expenses incurred in rendering the service, and must further demonstrate that the excess of revenue over cost is sufficient to pay a return of at least the average rate which the company is obtaining from all its business on the increment property. Also, at p. 522, the opinion gives a definition of "increment property," as, "property which was installed specifically for that class of service or which, if installed originally for some other class of service, could be dispensed with should the service in question be discontinued."

Oklahoma Corporation Commission: Re Osage & Oklahoma Co., P.U.R. 1917 D 426, holding industrial rates for natural gas may not be below cost in order to attract industries to a community.

Pennsylvania Public Service Commission: City of Lebanon v. Lebanon Gas & Fuel Co., P.U.R. 1922 D 563, where a three-part rate was under consideration consisting of a customer's or service charge, a demand charge, and a consumption charge, and it appeared that only about 28.7% of the utility's revenues came from the consumption charge, the rate burden was held to be inequitably distributed and the utility order to eliminate the distribution.

Texas Railroad Commission: Re United Gas System, 4 P.U.R., N.S. 285 (1933), where it was held that, "all gas delivered at the city gate measuring stations and not metered and sold to consumers shall be classified and designated as unaccounted-for gas. Such unaccounted-for gas should be apportioned between city gate deliveries of domestic gas and industrial gas according to the ratio of the total deliveries to all consumers within the city limits." (Natural gas involved.)

West Virginia Public Service Commission: Re Hope Natural Gas Co., P.U.R. 1921 E 418, where the Commission said that in order for the utility to be assured of "sufficient revenue to pay the expenses directly incident to each domestic service, whether any gas is consumed or not, we are of the opinion that it is just and reasonable to impose a monthly minimum charge."

The Wisconsin Public Service Commisson: Re Milwaukee Gas Light Co., 51 P.U.R., N.S. 299 (1943), at page 310, "The incremental costs incurred by respondents (the utilities involved) in producing the gas used in furnishing their space-heating services (i.e., the additional direct, or out-of-pocket costs incurred in producing the additional

of the total gas sold by the utility during the year 1949, and had they been charged with the costs of the company in proportion to the amount of gas taken by them, they would have been required to pay more than $5,000,000, when they actually paid only $2,105,113 for their service. Had the approved increase been in effect, they still would have paid a total of only $2,736,647.

Although the Gladson brief contained a rather extended argument against the "alternative fuels" theory as contrary to the law of Illinois, or (assuming the theory to be lawful) too impractical to be acceptable, most of the cases reported on the point sustain the validity of considering the costs of alternative or competing fuels.[22] The applicable statute would seem to be broad enough

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amount of gas required for such services) may serve as a criterion for determining the minimum level of rates at which such services could be furnished without direct injustice to consumers of other services and palpable discrimination. But our proper aim is not any minimum of rates that could be prescribed for space-heating services without discrimination, but rather the maximum of rates, within the limitations of the value of such services and of the rates charged for other services involving comparable consumption of gas." And at p. 311, "While it may be said that some advantage inures to the respondents' consumers of other services in permitting space-heating service to be given at rates that cover only a little more than the incremental cost incurred in producing the additional gas required therefor, it must also be true that the consumers of such other services are deprived of the full advantage to which they are thus entitled, if a reduction of rates, because of an excessive return, is applied only to the rates of service of space-heating customers. This is because such service contributes least of all to the recovery of the utility's entire cost of service. A reduction in rates thus effected would not only afford its benefits to those least entitled to it but likewise tend to prevent a further reduction of rates to those most entitled to it." And in Madison Restaurant Association v. Madison Gas & Electric Co., 17 P.U.R., N.S. 1 (1937), the principle was stated that a special rate must be justified not only by a showing that the rate is necessary to obtain the business, but also by a showing that the other customer of the utility will benefit from its obtaining such additional business.

22. *Alabama Public Service Commission:* Re Muscle Shoals Gas Co., P.U.R. 1927 D 804, which approved an optional two-part rate on the ground that such a rate, "gives the utility an opportunity to compete for business with other forms of fuel in serving the wholesale and industrial interests. The reasonable use of gas by such interests brings the production of gas considerably nearer to plant capacity and holds out the hope of an ultimate decrease of the rate to the household customers."

California Railroad Commission: Kilpatrick's San Francisco Bakery v. Pacific Gas & Electric Co., 33 P.U.R., N.S. 298 (1940), "Surplus gas rates provide for the increment cost of rendering the service plus whatever additional revenue competitive fuels permit." And in Re Southern California Gas Co., P.U.R. 1918 A 604, in determining rates for large industrial users, it was said that, "consideration has been given to the possibility of obtaining business in competition with other forms of fuel, such as oil." And again, in Union Sugar Co. v. Southern Countries Gas Co., 74 P.U.R., N.S. 490 (1947), the Commission stated, "It has been the history of the so-called surplus gas sales that such gas service has been at rates somewhat less than those for fuel oil, the other competitive fuel, and that any earnings on such gas service above the out-of-pocket costs have been applied to reduce the cost of supplying the firm service."

Massachusetts Department of Public Utilities: Re Springfield Gas Light Co., 38 P.U.R., N.S. 184 (1941), in which competitive fuels were considered in connection with promotional gas rates. And in Re Boston Consolidated Gas Co., 70 P.U.R., N.S. 1 (1947), in considering space-heating gas rates the Commission said, "This testimony as to relative fuel prices is important in establishing the value of the service to (the utility's) customers, which is one of the important considerations in arriving at a just and reasonable rate for service."

New Jersey Board of Public Utility Commissioners: Re Jersey Central Power & Light Co., 66 P.U.R., N.S. 129 (1946), where it was held that a gas rate increase was not inequitable as to consumers who had converted thereto when costs of all types of fuel had increased, the gas user still being better off than users of other types of fuel. And in Re Public Service Electric & Gas Co., P.U.R. 1929 E 17, a promotional rate schedule was approved so as to place the cost of gas more nearly upon a competitive basis with other fuels in order to prevent loss of business and create additional demand for cooking,

to permit the Commission to consider competitive fuels, §32 of the Illinois Public Utilities Act providing in part: "Any public utility, with the consent and approval of the Commission, may as a basis for the determination of the charges made by it classify its service according to the amount used, the time when used, the purpose for which used, *and other relevant factors.*" (Italics supplied).

No argument was made against that part of the order in the *Chicago* case which shortened the periods during which off-peak users were entitled to gas, and from the dearth of decisions by others Commissions on the matter, the validity of such curtailment is apparently established beyond question where adequate supply to the general, domestic customers would otherwise be put in jeopardy. Thus, where a natural gas company was threatened with a serious shortage of supply, the New York Public Commission [23] ordered that the prohibitory period for the consumption of gas in furnaces originally constructed for the use of other fuels be extended; that industrial use in excess of 40,000 cubic feet per month be discontinued between December 1 and April 1; and that gas engines exceeding ten horse power, and boosters, fans and blowers be discontinued.

But strenuous objections were raised to that part of the order

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water heating, house heating, and industrial uses and further the stability of the gas business.

New York Department of Public Service, State Division, Public Service Commission: Re Rochester Gas & Electric Corporation, 33 P.U.R., N.S. 393 (1940), "It has been shown that the principal reasons for the increase in the level of the gas rates found necessary herein are increased taxes, increased labor costs, and increased expenses for promotional work necessitated by the competition of other fuels with gas."

Wisconsin Public Service Commission: Re Milwaukee Gas Light Co., 51 P.U.R., N.S. 299 (1943), contains an extensive discussion of the subject which, at p. 308, includes this statement: "In fixing the price of gas for space-heating service, by the approval of the rate schedules here involved, the proper aim of the Commission was to prescribe a rate which should be, as nearly as possible, the full value of gas for space-heating purposes. And whether or not so considered by those who participated in the filing or approval of such rates, the value of gas for space-heating purposes was properly measured by the value of space-heating when provided by means of the fuel most nearly comparable in efficiency and convenience with gas. And we think the value of space heating by means of that comparable fuel was reliably measured by the price of that fuel in the open market." (The competing fuel was oil.)

However, the Montana Public Service Commission, in Re Havre Natural Gas Co., P.U.R. 1927 D 811, considering proposed increases in the rates of a natural gas company serving the city of Havre, said this: "The record contains a great deal of testimony with respect to an assumed competition between natural gas and coal. Havre is in a district which enjoys the advantage of great deposits of lignite coal. . . . It would not be proper to give any force to the price of lignite coal in fixing rates for natural gas service in Havre. There is no real basis for comparison and the process would be tantamount to fixing electric rates with regard for an assumed competition from natural gas." (The utility involved had a total monthly supply of only 968,000 cubic feet of gas per month and served only 734 customers, apparently all of whom were domestic or small commercial users, and the utility evidently needed increases in the rates it charged in order to survive. But had there been a "real basis of comparison" of coal prices and gas prices, the opinion would seem to imply that consideration thereof would be proper. In other words, the decision does not rule out a possibility of there being a "real basis of comparison" of coal and gas prices in other situations.)

23. Ross Graves v. Iroquois Natural Gas Co., P.U.R. 1920 F 563, at 579.

giving interruptible processors a shut-off priority over interruptible boiler fuel users, the contentions being that such classification was arbitrary and based on mere mechanical differences. However, the record shows that the major users who will benefit by the priority are steel processors (entitled to a two-hour shut-off notice under the superseded rates), whereas the boiler fuel users not eligible for priority are mostly meat packers (entitled to a thirty-minutes shut-off notice under the superseded schedule). The arguments seem to have ignored the fact that this classification was based on a similar distinction in the tariffs of the supplier, the Chicago District Pipeline Company, and the Illinois statute which authorizes classifications based up "the purpose for which used."

In an earlier case,[24] the Illinois Commission stated the principle usually applied in the resolving of these class distinctions as follows: "There is no unjust discrimination if all persons similarly affected by like conditions and subject to like circumstances are given the same rate." Which, of course, asks: when are persons "similarly situated?" "Affected by like conditions?" "Subject to like circumstances?" The problem potential is seemingly unlimited in variety.[25]

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24. Illinois Coal Operators' Association v. The Peoples Gas Light & Coke Co., 7 P.U.R., N.S. 403 (1934).

25. *California Railroad Commission: Kilpatrick's* San Francisco Bakery v. Pacific Gas & Electric Co., 33 P.U.R., N.S. 298 (1940), held that a bakery equipped with an oven heated by radiation from coils, the combustion chamber being an integral part of the oven, was not entitled to the rate applicable to "boiler fuel for boilers producing steam primarily for other than building heating."

Colorado Public Utilities Commission: Claude H. Hackett v. Greeley Gas & Fuel Co., P.U.R. 1932 C 257, held that classification of a laundry as industrial, and classification of a bakery at the higher domestic rate was discriminatory; the bakery was also entitled to the industrial rate.

Georgia Public Service Commission: Jerome M. Levy v. Atlantic Gas Light Co., P.U.R. 1931 C 24, held that it was discriminatory to offer preferential rates for space heating to commercial buildings and apartment houses and not to private residences.

Massachusetts Department of Public Utilities: Mayor of City of Everett v. Malden & Melrose Gas Light Co., 72 P.U.R., N.S. 129 (1949), held that the use characteristics of space-heating customers did not vary sufficiently from that of other customers to warrant compelling the utility to institute special rates for space-heating. But in Re Boston Consolidated Gas Co., this department held that the more uniform and continuous use of gas by customers taking it for space-heating, controlled by automatic devices having a tendancy to level out demand on the system during the twenty-four hours of the day, justified separate classifications.

Michigan Public Utilities Commission: Re Gas Corporation of Michigan, 13 P.U.R., N.S. 124 (1936), "It appears that the public good demands, when a limited supply of natural gas is available to a community, that it be conserved for relatively high grade fuel usages, such as domestic use, commercial use and high grade industrial use." (No example or definition given of "high grade" industrial use).

Missouri Public Service Commission: Re Missouri Power and Light Co., 72 P.U.R., N.S. 249 (1947), held that certain customers who were direct consumers of a natural gas pipe line were not entitled to a preferential rate, as they used the same gas for the same purpose as other customers.

Montana Public Service Commission: Re Billings Gas Co., 1 P.U.R., N.S. 259 (1933), would not permit a school board to group all of its buildings so as to qualify as a customer using "approximately 30,000,000 cubic feet per annum," and hence entitled to reduced rates, as the result would be an undue preference based on the fortuitous

Whenever emergency shortages occur the residential or domestic class is always given preference.[26]

Where supply is adequate, the big volume users of gas are entitled to proportionately lower rates, "for the reason that the cost of production of 1,000 cubic feet tends to decrease with volume and the cost of distribution and sale increase only slightly with the increased volume." [27]

In a few instances, special rates to attract industry have been condoned, but usually with the provision that such preference shall not be at the expense of other classes of consumers.[28]

Discriminations within a "class" are generally held bad.[29]

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circumstance of multiple ownership of separately consuming premises, and create a rate advantage not available to customers not so situated.

Tennessee Railroad and Public Utilities Commission: Re Jackson Housing Authority, 39 P.U.R., N.S. 100 (1941), held the low industrial rate applicable to low-rent housing and slum clearance projects constructed under the State Housing Authorities Law with financial assistance from the Federal Housing Authority.

Wisconsin Public Service Commission: Madison Restaurant Association v. Madison Gas & Electric Co., 17 P.U.R., N.S. 1 (1937), held that as between restaurants and house-heating customers there was no difference in use sufficient to justify different rate treatment.

26. *California Railroad Commission:* Re Midway Gas Co., P.U.R. 1921 B 730. In this case a shortage of natural gas was threatened and the commission placed one of its representatives in direct control of the supply.

Oklahoma Corporation Commission: Re Osage & Oklahoma Co., P.U.R. 1917 D 426; Re Pawhuska Oil & Gas Co., P.U.R. 1917 D 947.

Pennsylvania Public Service Commission: H. J. Bastian v. American Natural Gas Co., P.U.R. 1923 E 142.

27. *Georgia Public Service Commission:* Re Georgia Power Co., P.U.R. 1929 B 309, at p. 313; Re South Atlantic Gas Co., 76 P.U.R., N.S. 380 (1948).

California Railroad Commission: Re Modestro Gas Co., P.U.R. 1920 B 920.

Massachusetts Department of Public Utilities: Re Boston Consolidated Gas Co., 12 P.U.R., N.S. 113 (1936).

Missouri Public Service Commission: Re Laclede Gas Light Co., P.U.R. 1929 C 36.

New York Public Service Commission: Re Rochester Gas & Electric Corporation, P.U.R. 1924 D 198.

28. *Louisiana Public Service Commission:* City of Shreveport v. Southwestern Gas & Electric Co., P.U.R. 1929 E 12.

Oklahoma Corporation Commission: Re American Indian Oil & Gas Co., P.U.R. 1924 E 114; Crystal Ice & Ice Cream Co. v. Oklahoma Natural Gas Co., P.U.R. 1916 A 206; Re Osage & Oklahoma Co., P.U.R. 1917 D 426.

29. *Georgia Public Service Commission:* Re Georgia Power Co., P.U.R. 1929 B 309, held that suburbs absorbed into a metropolitan area were entitled to participate in a uniform, domestic rate.

Illinois Commerce Commission: Illinois Coal Operators' Association v. The Peoples Gas Light & Coke Co., 7 P.U.R., N.S. 403 (1934), held against a utility furnishing equipment to only one customer of a class.

Louisiana Public Service Commission: City of Shreveport v. Southwestern Gas & Electric Co., P.U.R. 1929 E 12, provided against discrimination between industrial users served under special contracts.

Massachusetts Department of Public Utilities: Re Boston Consolidated Gas Co., 14 P.U.R., N.S. 433 (1936), held that a classification in which the rate for gas supplied was made lower than other rates, where competitive or other conditions warranted, should apply to all who obtained and used the service under similar conditions.

Michigan Public Service Commission: Re Michigan Consolidated Gas Co., 76 P.U.R., N.S. 61 (1948), prohibited a utility from discontinuing service to industrial users in one district while continuing service to the same class in another district, the two districts being served by an integrated natural gas system.

Missouri Public Service Commission: Automatic Firing Corp. v. Laclede Gas Light Co., 72 P.U.R., N.S. 130 (1947), held that a utility could refuse space-heating service to new customers while continuing such service to its old customers, during a shortage, without violating the rule against discriminations between members of the same class; Re Laclede Gas Light Co., P.U.R. 1929 A 561, approved a schedule containing a sliding

Distance of transmission of gas from the plant of a utility to consumer may or may not justify differentials in the rates charged.[30]

The legitimate costs incurred by a gas utility in supplying the various classes of customers must necessarily be covered by the prices allowed, and as each class is properly chargeable for the costs attributable to the service received by it, variations in class costs may result in rate differentials.[31]

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scale of rates to avoid discrimination between classes of consumers and between individual consumers that would otherwise arise because of differences in the load and diversity factors of the various consumers.

New York Department of Public Service, State Division, Public Service Commission: Re Binghamton Gas Works, P.U.R. 1933 E 480, held that a utility reducing the rate for upper-bracket residential and space-heating consumers to promote space-heating, would also have to make a similar reduction for the average residential users by lowering the initial charge; and Re Brooklyn Union Gas Co., 45 P.U.R., N.S. 54 (1942), held a schedule objectionable that would have allowed the utility to determine what customers would be required to pay the costs of connecting their premises to the company's high pressure system.

Pennsylvania Public Utility Commission: Mrs. Sarah Elias v. Fayette County Gas Co., 45 P.U.R., N.S. 43 (1942), held a utility guilty of discrimination where it furnished regulators, distribution pipes and service lines to some customers and not to another; Pennsylvania Public Utility Commission v. Peoples Natural Gas Co., 33 P.U.R., N.S. 113 (1940), held discriminatory a schedule that in effect would have placed large domestic consumers and commercial customers in the class of industrial users for whose business the sellers of other fuels competed.

West Virginia Public Service Commission: Re Hope Natural Gas Co., P.U.R. 1921 E. 418, "There is no justification for discriminating between the large and small domestic consumer in favor of the latter. Each must pay in proportion to the service rendered."

Wisconsin Public Service Commission: Re Milwaukee Gas Light Co., 76 P.U.R., N.S. 171 (1948), the proposition that the classes of service first served would be entitled to priority in obtaining gas from the cheapest sources of supply and that the latest class of service added (space-heating) would secure gas from the most expensive sources of supply, held untenable.

30. *Massachusetts Department of Public Utilities:* Re Springfield Gas Light Co., 38 P.U.R., N.S. 184 (1941), held discriminatory a rate differential effective in different areas served by the same utility which areas were about the same distance from the point of production.

New York Department of Public Service, State Division, Public Service Commission: Re Queens Borough Gas & Electric Co., 39 P.U.R., N.S. 65 (1941), held that consumers located some distance from a gas plant, but in a relatively small territory, should not be burdened with rates higher than those charged consumers nearer the plant.

Pennsylvania Public Service Commission: Charles F. Himes v. Pennsylvania Power & Light Co., 16 P.U.R., N.S. 65 (1936), held that lower rates for natural gas could properly be charged in a metropolitan area than in the outlying regions thereof, where the area and regions were served by the same operating division of the utility and the capital involved per customer, for distribution alone, was approximately 45 per cent more for those in the outlying regions.

31. *California Railroad Commission:* Re Los Angeles Gas & Electric Corporation, P.U.R. 1922 A 283, where the fact that the additional use of artificial gas during the peak winter demands upon a mixed-gas company caused an increase in operating expenses, was taken into consideration in fixing block schedules applicable to large consumers.

Illinois Public Utilities Commission: maintenance costs of prepayment meters being greater than for credit meters, a higher rate may be charged for the former service: Western United Gas & Electric Co., P.U.R. 1915 A 1086; In re Illinois Northern Utilities Co., P.U.R. 1915 D 234; In re Public Service Co. of Northern Illinois, P.U.R. 1916 A 400; Re Rockford Gas Light & Coke Co., P.U.R. 1920 E 461.

Michigan Public Utilities Commission: Re Consumers Power Co., P.U.R. 1928 D 698, held that gas appliances of a storage type, heating water over a period of hours by a steady small demand were entitled to lower rates in proportion to the economy of their demand. "Lower demand and low rate are consistent; so, also, are high demand and high rate."

Missouri Public Service Commission: Re St. Joseph Gas Co., P.U.R. 1928 B 755, held that a gas company serving different classes of consumers could not allocate its costs on a theory that put all of the customers in one class as the result would be unreasonable as to the smaller consumers.

There is no marked difference in the treatment given natural gas as distinguished from manufactured gas by the Commissions, except that occasionally a casual comment may be found in the opinions that reveals an awareness of a conservation problem that may exist in regard to the natural resource.[32]

III. Conclusions

Although the authority of a State Utility Commission is entirely legislative, the reported opinions of the decisions in the cases relevant to the present inquiry were almost bare of any

New York Public Service Commission, Second District: George S. Buck v. William J. Judge, P.U.R. 1919 F 458, held that a gas company could charge a lower rate for street lighting than for residential purposes, the expenses of the former service being less than the expenses of the latter.

New York Department of Public Service, State Division, Public Service Commission: Re Queens Borough Gas & Electric Co., 39 P.U.R., N.S. 65, held that substantially higher rate should be charged for gas during the summer season where the peak demand was in the summer and that peak was relatively very important; recognition of the burden imposed on the company through increased operating charges and fixed charges to serve the summer business requiring that there be a substantial difference between the cost to consumers served throughout the year as compared with those taking service only during the summer months.

Wisconsin Railroad Commission: Re Wausau Gas Co., P.U.R. 1929 E 493, held that a slight differential between gas rates to customers on credit meters and those on prepayment meters was justified by their cost differences; Re Wisconsin-Michigan Power Co., 16 P.U.R., N.S. 263 (1936), held that a schedule providing a higher fixed charge and longer block at the initial rate for commercial customers than for domestic customers was justified by the fact that the average commercial customer places a larger demand on the system than does the average residential customer, and costs to the utility per commercial customer are greater than per residential user.

32. *California Public Utilities Commission:* Union Sugar Co v. Southern Counties Gas Co., 74 P.U.R., N.S. 490 (1947). "In reference to wastage of gas, . . . This Commission . . . is of the opinion that both the producers and the purchasing utilities should take every step that is economically feasible to stop . . . wastage."

Alabama Public Service Commission: Re Alabama Utilities Company, P.U.R. 1930 E 473. Here was considered a new schedule of rates for a company making the transition from manufactured to natural gas. The new rates for natural gas were set lower than those the company had been charging for manufactured gas, to the end that greater consumption by all classes of customers would be induced thereby. (The reverse, a company making the transition from natural to artificial gas with a consequent increase in its schedule of rates, was handled by the New York Public Service Commission in Re Baldwinsville Light & Heat Co., P.U.R. 1931 D 410 (1931).

Oklahoma Corporation Commission: Town of Terlton v. Empire Gas & Fuel Co., P.U.R. 1919 A 905, held that a natural gas company transporting part of its product out of the state could not refuse to serve a local town on the ground the supply was inadequate as this would constitute discrimination against the people of the state from which the supply was obtained.

Pennsylvania Public Service Commission: City of Erie v. Pennsylvania Gas Co., P.U.R. 1920 B 396, held that a natural gas company could not effectuate a schedule increasing its rates with each 5,000 feet of gas consumed by a customer monthly, the increase to apply to all customers irrespective of the nature of the use, quantity used, the time when used, or the purposes for which the gas was used, such additional rates being in the nature of a penalty imposed for the purpose of preventing waste and conserving supply.

West Virginia Public Service Commission: Re United Fuel Gas Co., P.U.R. 1918 C. 193, at p. 236: "The production and sale of natural gas is a hazardous and uncertain enterprise, depending for its profitable existence upon the finding and acquisition of reservoirs of gas in sufficient quantities to justify the large investment necessary for the mining and transportation of this elusive substance. Vast industrial enterprises are now almost wholly dependent upon the use of gas as a fuel for their continued prosperity, if not actual existence. The use of natural gas as a domestic fuel adds greatly to the comfort and convenience of those so fortunate as to have it available at a reasonable price for this purpose. It therefore seems that, as a matter of public policy and as a proper measure of fairness to those engaged in the natural gas business, rates should be fixed so as to not only secure a liberal return for the capital and enterprise invested therein, but as well also to encourage and promote the further development and extension of said business."

preoccupation with statutory enabling problems. The explanation appears to be, that however the function and the power of a Commission may be described in legislation, the justification for the existence of such a specialized tribunal is its application of the rule-of-reason to the problems that may properly come before it, and this is especially true in cases concerning problems of class and price.

The earnings and profits which a utility is allowed to realize must be "reasonable," the dividends that it pays its shareholders, and the salaries and wages that it pays its employees, and the interest and the charges which it pays its creditors and suppliers must be "reasonable." Its customers must be "reasonably" classified, and the rates that they are charged must be "reasonable." And these matters must be managed "reasonably," not only in respect to those directly interested in each particular transaction, but always "reasonably" in respect to the ubiquitous interest of the public.

No two utilities are the same, nor are any two problems arising in the course of their business identical, and these propositions are nowhere more evident than in the gas utility field. But despite the subjective nature of the basic standard, and the seemingly unlimited variations in the factual situations from which the practical problems arise, here as elsewhere in the multiple avenues of legal and economic administration, experience has evolved the elemental principles and the fundamental factors necessary for the articulate solution of the practical problems.

The utility and the people it represents are entitled to a fair return on the fair value of their properties. But the utility must stand ready to serve to the extent that it is committed to do so. Each customer is entitled to such service as has properly been assigned to his class, and each class of customers must pay not only its fair share of the utility's costs, but also a reasonable portion of the profits to which the utility is entitled. The utility cannot discriminate between members of any class; but, with the consent and approval of the Commission, it may as a basis for the determination of the charges made by it, classify its service according to the amount used, the time when used, the purpose for which used, and other relevant factors.

In the light of these elemental principles and fundamental factors, it is submitted that the order of the Illinois Commerce Commission in the *Chicago* case was reasonable, and therefore consistent with the basic standard that should control. The in-

terruptible, off-peak and gas motor classes under the superseded rates were obtaining unjust preference that constituted a discrimination against the general customers which it was the duty of the Commission to eliminate, and which the order does eliminate to the extent that the facts permit. Any interest of standing otherwise adversely affected by the authorized increase in rates and the possible result of unreasonably high revenues accruing to the utility, is adequately protected by that part of the order impounding the increase in revenues to a special reserve fund pending the outcome of the Commission's investigation into the reasonableness of the profits of the utility.

In approving the revised rates, it was relevant and essential that the Commission consider such competent and material evidence as was available including that concerning the prices of competing fuels, in order to confirm that the charges as approved would cover the costs of the services for these classes and also provide a proper portion of the profits to which the utility may be entitled; and at the same time determine that the increases as approved would not price these classes out of the gas market and thus devolve their aliquant share of the overhead to the remaining customers. What evidence other than that showing prices of competing fuels could better point up the reasonableness of such rates as to all the classes of customers?

With due regard to the nature of the product involved, the reasonableness of the shortening of the off-peak period in order to secure the supply for the general customers is clear. On the other hand, the shut-off priority obtaining to the interruptible processors over the interruptible boiler fuel users constitutes a classification consistent with the principle of purpose-for-which-used; not to mention again the other relevant factors that bore on this determination. It would not be fair to deny service to A, merely because B does not qualify for service. In short, the conclusions were based on findings supported by substantial evidence, and the order as a whole expressed reasonable discretion.

It is perhaps regrettable that the Commissions do not show more concern for natural gas as such, one of their primary functions being protection of the public interest. No doubt if the public showed more concern for natural gas as such, the Commissions would fall into line. In all other respects, the conclusion here is that our State Utility Commissions, in their administration of the rule-of-reason as shown in the materials cited and discussed, are doing as well as can reasonably be expected.