

Decision No. 32250

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MIRIAM G. HOSTETTER and HELENE  
E. GRIFFITH, Trustees of the  
Estate of D. Herbert Hostetter,  
Deceased,

Complainants,

vs.

SOUTHERN CALIFORNIA GAS COMPANY,  
& corporation,

Defendant.

CASE NO. 4400

ORIGINAL

Gibson, Dunn & Crutcher,  
by Woodward M. Taylor, for Complainants.  
Walter W. Cooper, for Complainants.  
T. J. Reynolds, for Defendant.  
Roy L. Chesebro, City Attorney, by Bourke Jones,  
Deputy City Attorney, for the City of Los Angeles.  
Stanley M. Lanham, for the Board of Public Utilities  
and Transportation of the City of Los Angeles.

WAKEFIELD, COMMISSIONER:

O P I N I O N

In this complaint, it is requested that Defendant be required to extend its gas mains into Complainants' Tract No. 11606 and project in accordance with Defendant's Rule and Regulation No. 20 in order to serve the future occupants of said tract in accordance with its existing applicable schedule of rates, rules and regulations.

The Complainants have indicated that they are owners of a tract of land of approximately 78 acres lying within the City of Los Angeles, bounded by Olympic Boulevard, Soto Street, Eighth Street, Grande Vista Street, Lydia Drive, and Dacotah Street. Complainants have subdivided said tract of land and designated same Tract No. 11606, by map recorded on or about January 6, 1939, in Book 213, pages 10 to 14, inclusive, of Maps, Records of Los Angeles County.

The Complainants further state that as the result of a Federal Housing Administration loan of \$3,000,000 and an investment of \$425,000 and the land by Complainants, construction is proceeding for the improvement of said 78 acres of said Tract as a family housing project, sometimes hereafter referred to as "Wyvernwood Housing Project." The project will consist primarily of 143 apartment buildings, containing an aggregate number of 1102 apartments, and will house approximately 4500 persons. The number of apartments per building will vary from four to twelve. It is estimated that the entire project will be completed by January 1, 1940. A blueprint showing the location of Defendant's existing gas mains and the apartment buildings Complainants propose to erect on said Tract as a part of said housing project, marked Exhibit "A" is attached to the complaint and made a part thereof.

Complainants state that on February 6, 1939, they requested Defendant to extend its gas mains in the said project and offered to sign a contract with Defendant therefor and tendered their check in the sum of \$6,192.37, which amount Defendant previously had estimated as the cost of extending its mains. It was stated that the above offer was made in compliance with the provisions of Section 5, "Rule and Regulation No. 20 - Gas Main Extensions" of Defendant's rules and regulations on file with the Commission.

It is further alleged that on February 7, 1939, Defendant denied Complainants request, returned their said check and refused to extend its gas mains into said Tract or project. Copies of Complainants' offer and Defendant's refusal, marked respectively Exhibit "B" and Exhibit "C" are attached to the complaint and made a part thereof.

Complainants allege that Defendant has an adequate supply of gas to meet the needs of the customers who will use gas in said Tract and Project and also adequate facilities to transport such supply of gas to said main extensions and that Defendant's refusal is arbitrary, unreasonable and discriminatory.

In answer to the above complaint, dated March 9, 1939, Defendant denies all of the above charges. As a further and separate defense to the cause of action alleged in said complaint, Defendant alleges that it is informed and believes that Complainants propose to use natural gas exclusively for space heating purposes and electricity exclusively for water heating and refrigerating purposes and propose to leave the use of gas in each individual apartment for cooking purposes to the election of the tenant, and further, that Complainants will not agree to use natural gas in said Wyvernwood Project for any other purpose than space heating. Defendant states that its Rule and Regulation No. 20 relating to its gas main extensions and its Rule and Regulation No. 21 relating to its extension of gas service never contemplated the service of natural gas to large housing projects of this nature where the only exclusive use of natural gas was to be for space heating purposes and that under such conditions it would be unable to earn a fair return on its property used in rendering gas service to said project.

Defendant further alleges it will extend its gas mains and services and install the necessary facilities to supply said project if the Commission will require Complainants to pay for the cost of mains, services, meters, regulators and other facilities necessary for rendering such service, or if this Commission in lieu thereof will fix a rate for natural gas to be used in said Wyvernwood Housing Project sufficient in amount to yield Defendant a fair return upon facilities used and useful by it in rendering natural gas service thereto.

Hearings in this matter were held in Los Angeles on April 12 and 13 and May 5, 1939. At the latter hearing, the matter was submitted for decision.

The fundamental issues raised in this proceeding are not new or unusual but the application of such issues to the facts surrounding them presents problems not commonly encountered in the past nor likely fully anticipated through present rates, rules and regulations. Rates for general gas service that are applied to a large number of customers must necessarily be predicated on average conditions of use. Such usage for domestic consumers accordingly reflects a composite of gas used for such purposes as cooking, water heating, refrigeration and space heating. The form of the gas rate is believed fairly well to equalize the differences as to quantity of use but seasonal variations in usage and demand probably are not fully compensated for.

The record in the instant case undoubtedly justifies the conclusion that the investment in plant facilities and other costs incidental to rendering gas service are considerably increased in order to take care of the gas demands occasioned by the seasonal heating load. It likewise is evident from the record that where a gas service is limited to heating for a few winter months, such service is not fully compensatory under existing filed rates. (1)

While this is true, I am of the opinion that the present proceeding is not of sufficient scope, nor does the record justify an adjustment in system rates generally. There is some evidence in the record, in so far as rates are involved, which might justify the establishment of a special rate for the Wyvernwood Housing Project. If this were done, this would bring about a situation wherein a very limited, isolated section of the

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(1) Reference is made to rates on file at the time hearings were held and the matter submitted for decision.

Defendant's service area would be required to pay a higher rate than in effect on the rest of the system. Such discrimination is believed unwarranted.

Having disposed of the question of rates, the issue resolves itself into an interpretation of certain of Defendant's rules and regulations as to its obligation to make the necessary investment in main extension, services, metering and regulating equipment in order to render service.

Defendant acknowledges that, under ordinary circumstances, such main extensions as are involved in the present project would, according to the provisions of its Rule and Regulation No. 20, be made entirely at its own expense. Defendant contends, however, that the provisions of Rule and Regulation No. 20 are based, among other things, upon the expectancy of reasonable earnings from potential consumers and consequently it is acting fully within its rights and protecting its other customers in asking for relief from making the necessary investment to serve the Wyvernwood Housing Project. In this respect Defendant utility points to Subsection (e), under Section (6), Rule and Regulation No. 20, which is as follows:

"When the application of this Rule and Regulation appears to be unduly burdensome to either party, the Company, or the applicant, may refer the matter to the Railroad Commission of the State of California for a special ruling or for the approval of special conditions mutually agreed upon."

I am of the opinion that, though the record does not establish the exact character of use to be made of the gas at the Wyvernwood Project and the net earnings to be derived from such service, the record does justify the conclusion that the provisions of Rule and Regulation No. 20 are not applicable to this extension and, further, that the reasonably expected earnings do not warrant the Defendant making the necessary investment in the main extension. The Order, accordingly, will provide for the Complainants advancing the full cost of said main extension, as well as setting forth the conditions under which such monies may be subject to refund.

The situation in reference to service extensions, meters and regulators is believed to be different. The Defendant takes the position that the saving clause heretofore quoted likewise applies to the installation of service and metering equipment. The conditions under which service extensions are made are covered by Defendant's Rule and Regulation No. 21. It is uncontroverted that the conditions laid down by said rule justify the installation of service lines at Defendant's expense. Rule and Regulation No. 21 provides for no exception as does Rule and Regulation No. 20.

There are no filed company rules and regulations, as under mains and services, for meter and regulating equipment. It is common practice, however, by public utilities throughout the state to stand the cost of such equipment for domestic customer service and under Section 21 of this Commission's General Order No. 58-A it is so provided. Because of these facts and further because I do not believe there is sufficient justification to recommend changes, the Order will provide that the Defendant utility shall stand the full cost of services, meter and regulating equipment to serve the Wyvernwood Project.

In so recommending, it is contemplated that service will be rendered to individual meters as opposed to what is commonly referred to as service through master meters. Under the latter plan the Complainants would stand the expense and cost of installing, maintaining and operating all mains and services beyond the master meters, as well as the necessary regulating and sub-metering equipment. While the use of master meters undoubtedly would be fully justified under certain conditions, yet I seriously question whether the rates and rules contemplate the serving of such a large number of apartment house units and consumers as are here involved through a master meter setup.

The following form of Order, which I am recommending, will provide for metered gas service to each individual apartment house unit.

#### O R D E R

Complainants having applied to this Commission for an Order directing the Defendant, Southern California Gas Company, to extend its natural gas facilities to serve Complainants' tenants;

And the Commission, after public hearings in relation thereto, having fully considered the facts and the matter having been submitted; now, therefore,

IT IS HEREBY ORDERED that Defendant, Southern California Gas Company, extend its natural gas facilities in such manner as may be necessary to provide gas service to the so-called Wyvernwood Housing Project, herein described, and to serve said Project under its regularly filed rate schedules, subject to the following conditions and not otherwise:

Complainants shall pay to Defendant Six Thousand Four Hundred Eighty-six Dollars and Twenty-eight Cents (\$6,486.28)

as the estimated cost for extending and reinforcing Defendant's gas mains into the Wyvernwood Project (estimated cost to be adjusted to actual after installation has been completed); all gas mains to be owned and maintained by Defendant but Defendant shall, at its own cost and expense, install the remaining facilities which are necessary to render gas service to said Project; provided that should more than one hundred (100) standard gas ranges be installed within five (5) years, the defendant utility shall reimburse the Plaintiffs at the rate of Forty Dollars (\$40.00) for each such range installed in excess of one hundred (100), such payment or payments to be without interest and to be made at the time of installation. No such refunds shall be made after five (5) years and the total of such refunds shall not exceed the total amount paid by Plaintiffs to Defendant in accordance with this Order.

The foregoing Opinion and Order are hereby adopted as the Opinion and Order of the Railroad Commission of the State of California.

This Order is made effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 15<sup>th</sup> day of August 1939.

Robert A. [Signature]  
Frank [Signature]  
[Signature]  
Justice J. [Signature]  
Commissioners.