

Decision No. 46370

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LAKEWOOD PARK, a corporation,
Complainant,

-vs-

SOUTHERN CALIFORNIA GAS COMPANY,
a corporation,

Defendant.

Case No. 5316

ORIGINAL

J. Amos Fleming, attorney, for Lakewood Park, complainant, and Lakewood Park Mutual Homes No. 1, intervenor; L. T. Rice and H. P. Letton, Jr., for Southern California Gas Company, defendant; L. B. Harbour, Jr., Lakewood Park Mutual Homes No. 1, intervenor; L. T. Hollopeter, Lakewood Park, complainant; Dewey L. Strickler, Deputy City Attorney, for City of Long Beach and Municipal Gas Department of the City of Long Beach, interested parties; C. T. Mess and Boris H. Lakusta, for staff of California Public Utilities Commission.

O P I N I O N

In this proceeding Lakewood Park, a corporation, hereinafter referred to as complainant, has asked that this Commission issue an order directing the Southern California Gas Company, hereinafter referred to as defendant, to extend its present gas mains and facilities situate east of Lakewood Boulevard, as delineated on a map attached to and made a part of the complaint as Exhibit D, into the lands lying west of Lakewood Boulevard and west of Downey Avenue and its southerly prolongation, within the area for which the defendant now holds a certificate of public convenience and necessity upon request by complainant for such service and extension and upon its compliance with defendant's rules and regulations applying to such gas service and extension of its facilities.

Complainant further requests that this Commission issue an order declaring that any covenant made by defendant in any agreement with the City of Long Beach and any other parties in and by the terms of which the defendant agreed not to serve gas within the territory in Los Angeles County, delineated in red on the map attached to the complaint and marked Exhibit A, for which territory the defendant now holds a certificate of public convenience and necessity, was and is null and void so far as it relates to said lands and as against this complainant or its successors or assigns as owner of said lands.

C-5316 A public hearing was held on this matter in Los Angeles on October 10, 1951, before Commissioner Huls and Examiner Crenshaw.

A petition of Lakewood Park Mutual Homes No. 1, a corporation, for leave to intervene, was filed with this Commission on October 4, 1951. At the hearing the petition for intervention was granted, and hereinafter Lakewood Park Mutual Homes No. 1, a corporation, will be referred to as intervenor.

According to the record complainant has under construction a subdivision located in the general area lying between the prolongation of Downey Avenue on the east and the Union Pacific tracks on the west, Candlewood Avenue on the north and Carson Street on the south. The area is more particularly described as Lots 14, 15, 24, 25, 28, 29, and portions of Lots 41, 42, 43 and 44, all in Tract No. 8084 in Los Angeles County, California. The testimony shows that complainant plans to subdivide this 750 acres within the next year into 4,000 lots in the area west of Downey Avenue, as shown on the map submitted as Exhibit No. 3.

Intervenor testified that it is engaged in the business of constructing and selling residences in a portion of the unincorporated area of the County of Los Angeles, as described in this complaint. Since the filing of said complaint a portion has been subdivided into Tracts Nos. 17222, 17223 and 17224, which were sold to the intervenor by the complainant and referred to as Mutual No. 1 Tracts. Construction work has been started for the building of 501 residences in these tracts. Foundations are being poured and the sewers are being installed at the present time. Of the 501 lots 155 are located in the territory west of Downey Avenue. A considerable number of the lots have been sold and the homes are in the process of progressive construction. It is the intervenor's contention that the determination of who is to serve gas in the area west of the prolongation of Downey Avenue, wherein these lots are located, cannot be delayed much longer without serious damage to the coordination of construction work and delay in occupancy by the purchaser. Future tracts have been laid out, consisting of Tracts Nos. 17225 through 17230, both inclusive.

Defendant has no gas mains presently installed within the area here involved but has facilities capable of supplying the area with adequate gas service.

The record discloses that request was made to the Southern California Gas Company by complainant for gas service to the tracts lying west of the prolongation of Downey Avenue. Defendant advised complainant that due to an agreement entered into with the City of Long Beach, dated June 14, 1941, the area west of the prolongation of Downey Avenue, was in the service area of the Municipal Gas Department of the City of Long Beach as provided in the agreement and suggested that application for

gas service in that area be made to the Long Beach Gas Department. The record shows that such agreement had been forwarded by defendant to the Commission with a letter attached, dated August 26, 1941, which appeared in evidence as defendant's Exhibit No. 14. The Commission acknowledged receipt of said agreement by letter dated September 25, 1941 (Exhibit No. 15). Such acknowledgment cannot be construed to constitute Commission approval of the terms thereof.

It may be noted that the agreement contained the usual clause making the agreement subject to such changes or modifications by the Commission as it might direct from time to time in the exercise of its jurisdiction. At the hearing the defendant and the City of Long Beach, each stated that in the past it had adhered to the division of territory as described in this agreement and in argument both contended that it was a working agreement entered into in good faith, was not illegal, and should be kept in full force and effect.

The boundary lines as set forth in the agreement of June 14, 1941, have remained the same except in a few instances where the City of Long Beach has annexed territory which formerly was in the county, in which case it purchased the facilities of the defendant.

All of the territory in question is located outside of the city limits of the City of Long Beach and within the area which defendant, by certificate from this Commission, has been authorized to serve. The Commission in Application No. 4391, by Decisions Nos. 6162 and 6267, dated March 12, 1919 and April 16, 1919, respectively, issued a certificate of public convenience and necessity to defendant which authorized it to exercise the rights and privileges of Los Angeles County Ordinance No. 515 (New Series), including the territory here in question.

The record shows that defendant has never sought modification of its certificated authority to exclude the area in question. Accordingly, it has never been relieved of its obligation to render gas service in such area, notwithstanding any agreement with the City of Long Beach to the contrary.

A witness for defendant testified that under its filed rules and regulations no advance from the complainant would be required for gas service to the territory involved herein. On the other hand, the record likewise shows that if gas service were supplied by the Municipal Gas Department of the City of Long Beach, complainant would have to pay 60 cents per lineal foot for the extension of gas service pipe, plus the cost of installing a gas meter housing at each residence for which there would be no refund. Complainant estimates this additional cost to be approximately \$35 per home or about \$150,000 in total.

It was further contended that, since the rates of the Municipal Gas Department are established by ordinances of the City of Long Beach, and the territory involved is located in the County of Los Angeles and outside the city limits, the users of gas in this area would have no voice in the control over the operations of the municipal utility.

In view of the above circumstances complainant did not desire that the Municipal Gas Department of the City of Long Beach render gas service in its subdivision, but stated that defendant herein, a public utility subject to the regulation of this Commission, should render the service.

In Decision No. 45028 in Case No. 5182, dated November 21, 1950, in holding the complainant therein, Meadow Valley Lumber Company, was entitled to receive its electric energy supply from the defendant Pacific Gas and Electric Company,

rather than from the Plumas-Sierra Rural Electric Cooperative, despite a territorial agreement between the defendant and the said cooperative, similar in purpose and intent to that herein at issue, this Commission said: ✓

"... unless, other controlling facts are set up as a defense to complainant's request for defendant's service, defendant is under a legal duty to comply with such request, for a utility's duty is ordinarily a correlative of its service right."

Upon application to the Supreme Court of California, a writ of certiorari was denied on June 19, 1951.

As the complainant has applied in writing to the defendant for gas service within the area involved in this proceeding, and as intervenor has succeeded to the ownership of a portion of the property involved herein, we find that it is incumbent upon the defendant, and the order will so provide, that Southern California Gas Company shall render such gas service in accordance with its rules and regulations on file with this Commission.

ORDER

Complaint as above entitled having been filed with this Commission, a public hearing having been held thereon, the matter having been submitted and now being ready for decision, ✓

IT IS HEREBY ORDERED that defendant, Southern California Gas Company, render gas service to complainant, Lakewood Park, and/or intervenor, Lakewood Park Mutual Homes No. 1, in accordance with the rules and regulations of Southern California Gas Company on file with this Commission within the service area as authorized by this Commission.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 6th day of November, 1951.

R. J. [Signature]
 President.

Justin F. [Signature]

Harold P. [Signature]

[Signature]

[Signature]
 Commissioners.