

**ORIGINAL**

Decision No. 51835

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SOUTHWEST GAS CORPORATION, a corpo-  
 ration,  
 Complainant,  
 vs.  
 PACIFIC GAS AND ELECTRIC COMPANY, a  
 corporation,  
 Defendant.

Case No. 5599

W. M. Laub and Wm. J. Cusack, for complainant;  
F. T. Searls and John C. Morrissey, for  
 defendant;  
Martin Schwartz, for California Electric Power  
 Company, interested party;  
Robert O. Randall, for the Commission staff.

OPINION AND ORDER

In this complaint Southwest Gas Corporation (hereinafter sometimes referred to as Southwest) alleges that there is a present demand for natural gas service in two areas adjacent to its present service area, embracing the communities of Lockhart and Apple Valley, in San Bernardino County, California; and that defendant, Pacific Gas and Electric Company (hereinafter sometimes referred to as Pacific), has unreasonably refused to amend the service agreement under which complainant purchases its total supply of natural gas from defendant, thereby preventing complainant from providing service in these areas.

Complainant asks that Decision No. 49101 of this Commission be modified to deny defendant the right to exercise the rights and privileges of a franchise within that portion of San Bernardino County, embracing the community of Lockhart; and that defendant be

ordered to modify the service agreement under which defendant sells gas at wholesale to complainant so as to permit complainant to resell said gas within the communities of Lockhart and Apple Valley.

Public hearings were held on this complaint by Commissioner Ray E. Untereiner and Examiner C. E. Crenshaw on April 13, 1955, and July 7, 1955, in Los Angeles. At that time the complaint was consolidated for hearing with Application No. 36457, in which Southwest requests a certificate of public convenience and necessity to exercise its San Bernardino County franchise and to construct facilities in order to provide natural gas service to the communities of Lockhart and Apple Valley.

By stipulation of all parties, all pertinent evidence presented relative to Application No. 36457 is to be considered as being presented also in Case No. 5599. While, in its answer to the complaint, defendant generally denied the major allegations of complainant, it presented no evidence at the hearings in its defense. In fact, complainant, in Exhibit No. 5, presented a copy of a new service agreement entered into between Pacific and Southwest, dated May 23, 1955, which specifically includes the areas which are the subject of this complaint within the territory in which Pacific agrees to permit Southwest to sell natural gas. It was testified that this revised service agreement has been presented to the Commission for approval in a joint application, No. 37101, filed July 6, 1955. While this revised service agreement is of no effect until such time as it may be authorized by the Commission by appropriate order, its provisions, as placed in evidence herein, can be taken as evidence of intent on the part of defendant. Furthermore, witness for Pacific, appearing as an interested party in Application No. 36457, stated that due to increased supplies of gas now, or soon to be available to it, it was willing to have

complainant increase its gas sales by serving additional customers and would therefore have no objection to the enlargement of the service area requested.

Motion to Dismiss

In view of the evidence presented, complainant moved the dismissal of its complaint, which motion was taken under submission at the same time the case and application were submitted on the evidence presented.

Inasmuch as the Commission finds, in its decision in Application No. 36457 being rendered concurrently herewith, that public convenience and necessity presently require the extension of complainant's facilities in order to provide natural gas service in the communities of Lockhart and Apple Valley; and inasmuch as complainant is governed by the provisions of the present tariff under which it receives wholesale gas service from defendant until such time as a revised service agreement is duly approved by this Commission, the Commission is of the opinion, in order that the condition complained of may be remedied immediately, that complainant's motion to dismiss should be denied, and a decision rendered on the evidence presented.

Currently Effective Service Agreement

It appears from the complaint that Southwest believes it is receiving service under an agreement dated May 21, 1952. This Commission's files contain no record of this agreement having been submitted for approval as provided for in General Order No. 96. It is presumed that the agreement referred to is that agreement filed with the Federal Power Commission during the period when Pacific's sale to Southwest was under that Commission's jurisdiction. Our files reveal that on April 15, 1954, subsequent to the passage of the "Hinshaw Bill", under which jurisdiction over this sale passed to this

Commission, Pacific, by its Advice No. 209-G, filed a new Tariff Schedule No. G-64 and a form of Service Agreement covering wholesale natural gas service to Southwest. Our records do not show that an agreement in the filed form was ever executed and submitted to the Commission, but since service has been rendered and received under Schedule G-64, it must be presumed to have been rendered and received in accord with the form of agreement filed as a part of, and required by, said schedule.

The form of agreement filed with Schedule No. G-64 (Original Cal. P.U.C. Sheets Nos. 3409-G, 3410-G and 3411-G) contains a clause purporting to limit the area within which Southwest may sell the natural gas supplied to it by Pacific, thereby purporting to preclude service to the communities of Lockhart and Apple Valley by Southwest. In ordering this clause amended to permit service to these communities, the Commission is not at this time passing on the propriety of the inclusion of territorial limitations of this nature in a wholesale tariff service agreement. There will be ample opportunity in the proceedings in Application No. 37101, relative to the new service agreement between Pacific and Southwest which contains similar provisions, for a determination on that point.

#### Conclusions

Complainant requests that this Commission's Decision No. 49101, dated September 15, 1953, in the second supplement to Application No. 29548, by which the Lockhart area was included within the service area of Pacific, be modified so as to deny Pacific the right to serve therein. The Commission takes notice of ordering paragraphs 3 and 4 in said decision, whereby Pacific was denied the right to exercise its San Bernardino County franchise within the service area of Southwest, and was further placed on notice that the Commission by future order might limit the authority therein granted

as to any territory not then being served by Pacific. Since the order in Application No. 36457 includes this area within Southwest's service area, and since Pacific is not now serving said area, the aforementioned order amply covers complainant's request on this point and no further order is required.

The Commission being of the opinion that public convenience and necessity require the extension of natural gas service by Southwest Gas Corporation to the communities of Lockhart and Apple Valley, more particularly described as the East half of Township 11 North, Range 5 West, and the West half of Township 11 North, Range 4 West, S.B.B. & M.; and Township 5 North, Range 3 West, S.B.B. & M., respectively; and defendant having offered no evidence showing that such extension of service should not be consummated; and since defendant's currently filed Gas Service Contract Form, Schedule No. G-64, purports to prevent such extension of service,

IT IS HEREBY ORDERED that Pacific Gas and Electric Company shall refile, within five days after the effective date hereof, that portion of its "Gas Service Contract Form, Schedule No. G-64," set forth on Original Cal.P.U.C. Sheet No. 3409-G, revised to amend the definition of the "Victorville Service Area" in paragraph 2 thereof so as to include the East half of Township 11 North, Range 5 West, and the West half of Township 11 North, Range 4 West, S.B.B. & M.; and Township 5 North, Range 3 West, S.B.B. & M.

IT IS HEREBY FURTHER ORDERED that said "Gas Service Contract Form" shall be further amended by adding the following statement to the definitions of both the "Victorville Service Area" and "Barstow Service Area," in order to clarify said contract's relationship to this Commission's authority over the establishment of service areas:

"and any additions thereto authorized by the Public Utilities Commission of the State of California, or any extensions thereto made

in the ordinary course of business as contemplated by Section 1001 of the Public Utilities Code."

IT IS HEREBY FURTHER ORDERED that in all other respects the above-entitled complaint is dismissed without prejudice.

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

Dated at San Francisco, California, this 16<sup>th</sup> day of August, 1955.

John E. Mitchell  
President

Justice I. Calderon

Paul Winterman

Walter D. ...

H. ...

Commissioners