

Decision No. 51915**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of PACIFIC GAS AND ELECTRIC
COMPANY and SOUTHWEST GAS CORPO-
RATION for authority, among other
things, to carry out a contract
dated May 23, 1955 for the sale
of natural gas.

Application No. 37101

F. T. Searls and John Carroll Morrissey, for
Pacific Gas and Electric Company, applicant;
W. M. Laub, for Southwest Gas Corporation,
applicant.
J. J. Deuel, for California Farm Bureau
Federation, interested party.
Robert O. Randall, for the Commission staff.

O P I N I O N

Pacific Gas and Electric Company (hereinafter sometimes referred to as Pacific), and Southwest Gas Corporation (hereinafter sometimes referred to as Southwest), by the above-entitled joint application filed July 6, 1955, request an order of the Commission authorizing them to carry out the terms and conditions of an agreement, dated May 23, 1955, relating to the supplying of natural gas at wholesale by Pacific to Southwest, for resale to Southwest's customers in the Barstow and Victorville areas. A copy of said agreement is attached to the application as Exhibit A. In addition, applicants request, in certain matters related to the proposed agreement, that the Commission:

1. Authorize Southwest to cancel its existing Rule and Regulation No. 31, set forth as Exhibit D in the application, and to issue and file in lieu thereof its proposed Rule and Regulation No. 19, designated as Exhibit E in the application.
2. Authorize Pacific to amend its existing Schedule No. G-64 as set forth in Exhibit F of the application.

3. Declare and find that applicant's proposed rules and regulations, as set out in the application, are fair, just and reasonable and that to the extent said proposed rules or regulations will result in an increase or increases in any of applicant's existing rates or charges, such increases are justified.
4. Grant applicants such further or different relief as to the Commission may appear proper.

A public hearing was held before Commissioner Ray E. Untereiner and Examiner Carl E. Crenshaw on August 3, 1955, in San Francisco.

History of Sale of Gas by Pacific to Southwest

According to the record, Southwest receives its entire present supply of natural gas at wholesale from Pacific's so-called Topock-Milpitas pipeline. This gas is received at two separate points for delivery into Southwest's Barstow and Victorville service areas.

Pacific and Southwest first entered into an agreement for the sale of natural gas to Southwest on August 10, 1951. By this agreement, Pacific agreed to sell and deliver and Southwest agreed to purchase, under certain terms and conditions, natural gas for resale by Southwest to its customers for domestic and commercial purposes only within Southwest's service area. The agreement, among other things, defined Southwest's service area; established the maximum daily quantities of gas to be supplied by Pacific; provided for the rate to be paid by Southwest for wholesale natural gas service; and provided that the term of the agreement should extend until August 31, 1961. Since at that time the Federal Power Commission asserted jurisdiction over such sales of interstate gas, this agreement was filed with that Commission on or about October 8, 1951, to become effective November 8, 1951.

Subsequently Pacific and Southwest executed an agreement dated May 21, 1952, relating to the same subject as the agreement dated August 10, 1951, but incorporating certain changes. By this agreement Pacific relaxed certain restrictions contained in the August 10, 1951, agreement, such as the limitations of sales by Southwest to domestic and commercial customers only. This latter agreement was forwarded for filing with the Federal Power Commission, and was accepted for filing by that Commission to be effective June 22, 1952. A copy of this agreement is attached to the application and designated as Exhibit B.

As of March 27, 1954, by the passage of the so-called "Hinshaw Bill", the Natural Gas Act was amended to provide that the Federal Power Commission does not have jurisdiction with respect to the sale for resale of natural gas in interstate commerce within a state, provided that such gas is ultimately consumed within the state and that the sale for resale of such gas within the state is regulated by the Public Utilities Commission of the state. Following this change in the Natural Gas Act, Pacific, by Advice No. 209-G, dated April 15, 1954, filed with the California Public Utilities Commission its Schedule No. G-64 for wholesale natural gas service to Southwest. By Commission Resolution No. G-959, said schedule was made effective March 27, 1954. Schedule No. G-64 provided essentially the same tariff schedule as was then on file with the Federal Power Commission, changed in form, however, to conform with General Order No. 96 of this Commission. This filing contained a form of service agreement required to be entered into as a condition precedent to receiving service under Schedule No. G-64.

The Gas Service Contract form prescribed by Schedule No. G-64 has never been executed nor has any agreement covering this service been heretofore submitted to this Commission for authorization. Since, however, Pacific has supplied service and Southwest has received and paid for such service at the rate prescribed in Schedule No. G-64, it could be presumed that such service was rendered and received under the terms of said unexecuted agreement. A copy of the presently filed tariff Schedule No. G-64 is attached to the application as Exhibit C, and a copy of the form of agreement currently filed was submitted at the hearing as Exhibit No. 4.

Pacific's presently filed Schedule No. G-64, and its associated service agreement form, besides setting the price which Southwest is to pay for its gas supply, contain certain limitations on said service:

1. That Southwest must maintain and enforce its filed Rule and Regulation No. 31 (Revised Cal. P.U.C. Sheet No. 88-G), providing in substance that Southwest will not deliver in excess of 25,000 cubic feet of gas per day to any consumer unless such consumer cannot readily use another fuel without undue hardship.
2. That Southwest is limited to a maximum daily total receipt from Pacific of 7 million cubic feet during 1954 and thereafter.
3. That gas delivered to Southwest may be resold for ultimate public consumption only within the service areas of Southwest as those service areas are defined by metes and bounds in the service agreement.

Another condition of this wholesale transaction was set up by this Commission in its Decision No. 48595, dated May 12, 1953 (Application No. 34061), whereby Southwest was ordered to curtail its interruptible load "concurrently and pro rata with the curtailment by Pacific of its interruptible load."

A witness for Southwest testified that the growth of the demands of customers in its service areas for natural gas service has placed upon Southwest the necessity of obtaining additional natural gas supplies. At the same time the expectation of ample future sources of gas, the growth in the demand for gas by Pacific's customers in northern and central California, in addition to new customers on Pacific's lines and the estimated future growth of the demand for gas in Pacific's service areas, have made it economically practical for Pacific to augment its transmission facilities and to contract for larger amounts of out-of-state gas. Said larger amounts of gas available to Pacific have made it possible for Pacific to offer an increased gas supply to Southwest without, in Pacific's opinion, impairing its ability to meet the requirements of customers in its service area. Consequently, according to the record, Pacific and Southwest have had extensive negotiations designed to resolve mutual problems; including, in particular, Southwest's difficulties which have arisen because of the above limitations imposed on deliveries of gas by Pacific to Southwest and on the sale of gas by Southwest to its customers. As a result of these negotiations, Southwest and Pacific have mutually agreed upon a new gas service contract designed to adjust the relations between the two companies. This gas service contract, dated May 23, 1955, attached to the application as Exhibit A and also submitted at the hearing as Exhibit 1, would supersede the presently effective service agreement.

Proposed Agreement

Among other things, the new gas service agreement dated May 23, 1955, contains provisions whereby:

1. Pacific agrees to deliver to Southwest a maximum daily amount of 15 million cubic feet of gas instead of 7 million cubic feet of gas as

provided for in the existing agreement and Pacific's existing Schedule No. G-64.

2. Within the agreed-upon maximum daily contract quantity, Southwest may provide interruptible gas service at rates of delivery not in excess of 2 million cubic feet per day. This replaces the present limitation to a maximum delivery of 25,000 cubic feet per day to any one customer, as prescribed in Southwest's Rule and Regulation No. 31.
3. Gas received by Southwest from Pacific is for resale and use only within Southwest's Barstow and Victorville service areas as redefined in the contract. The new definition of these service areas enlarges the Victorville service area to include the communities of Lockhart and Apple Valley.
4. Curtailment of service by Southwest to its interruptible customers will be accomplished by Pacific's assigning such customers to appropriate groupings and subgroupings, along with Pacific's own interruptible customers, to permit curtailment of Southwest's interruptible customers as if they were individual customers of Pacific.
5. Southwest agrees to enter no objection to Pacific's making application to the Commission for a certificate of public convenience and necessity granting to Pacific the privilege of supplying directly the installations and loads of all customers located in Southwest's service area whose gas requirements are initially estimated or later proved to be in excess of 2 million cubic feet per day.
6. Southwest agrees to pay for interruptible gas at the rate of 35.1 cents per thousand cubic feet, said rate to be increased or decreased commensurately with any increase or decrease in the initial block of the base rates under Pacific's interruptible Schedule No. G-50; to pay for all other gas at the commodity rate of Pacific's Schedule No. G-64; and to pay a monthly minimum charge of \$15,000 a month instead of the present minimum of \$7,000 a month.

Relative to the price for interruptible gas, it was testified that on the effective date of the contract, May 23, 1955, the applicable commodity rate for interruptible gas was 35.1 cents per Mcf. On May 25, 1955, however, the base rate for the first commodity block of Pacific's Schedule No. G-50 was increased by 3.56 cents per Mcf in accordance with this Commission's Decision No. 51360. Because of this increase

the price of interruptible gas to Southwest under the proposed agreement would be increased by 3.56 cents per Mcf to 38.66 cents per Mcf. This is the same price as the currently effective rate for firm gas under Schedule No. G-64.

7. This agreement shall be effective until August 31, 1961, and thereafter from year to year until terminated by either party on twelve month's written notice.

Applicant's Position

Witness for Southwest testified that, as set forth in Exhibit 10, the requirements for gas within its service area have grown rapidly from 650,649 Mcf for the year 1953, to an actual and estimated 1,153,102 Mcf for the year 1955. He estimated that Southwest's total requirements would reach 2,964,980 Mcf in 1961. It was also shown that the peak-day requirement, including interruptible industrial customers who might or might not be curtailed on the peak day occurring in Southwest's territory, is estimated to increase from 6,516 Mcf in 1954 to 14,711 Mcf in 1961. The firm peak-day requirement is estimated to increase correspondingly from 5,601 Mcf in 1954 to 10,796 Mcf in 1961. From this testimony it is clear that Southwest must have available to it more than 7,000 Mcf per day if it is to continue to meet its firm requirements on a peak day.

Witness for Pacific in turn testified that, owing to greatly increased supplies of gas now or soon to be available to it, the increased volumes provided for in this proposed agreement could be supplied to Southwest, and Southwest could be permitted to increase its sales of gas to interruptible customers without jeopardizing service to customers in Pacific's service area. It was shown that Pacific currently has the requisite facilities and contractual commitments to obtain 700 million cubic feet of gas per day from out-of-state sources alone.

Position of Other Parties

Representatives of the California Farm Bureau Federation and the Commission staff questioned the witnesses for applicants regarding certain provisions of this proposed agreement to which they took exception:

1. The representative of the Farm Bureau questioned the limitation discussed in Item 3 above (contained in Sections 2 and 4 of the proposed agreement), whereby Southwest is prohibited from selling gas purchased from Pacific outside of certain specifically designated areas. The Farm Bureau was concerned as to whether this limitation would prevent Southwest from serving certain of its members located just outside the defined area, but which, without this limitation, might be reached under the "extensions in the normal course of business" provision of Section 1001 of the Public Utilities Code. The staff's questioning was directed towards the point as to whether or not this prohibition was intended to infringe on the Commission's authority over the prescription of utility service areas.

While admitting that Pacific intended this provision to permit it to exert control over the expansion of Southwest's gas requirements, Pacific's witness contended that these provisions in no way limited the power of the Commission to issue certificates to Southwest permitting service to additional areas; he contended that such provisions were intended merely to prevent Southwest from selling gas purchased from Pacific within such areas. The speciousness of this contention is made clear to this Commission by the fact that Pacific is the sole source of supply of gas presently available to Southwest. It appears that Pacific is attempting to assume the jurisdiction given this Commission by law over the prescription of the service area within which Southwest may render service to the public. These limitations should be reserved for Commission authorization.

2. It was brought out that the restriction contained in Section 7 of the agreement preventing Southwest from serving interruptible customers having requirements in excess of 2 million cubic feet per day was designed specifically to prevent Southwest from supplying two large cement plants in its service area. While the testimony also indicated that Southwest might not be able physically to provide the large volumes of gas desired by these plants, it appears questionable as to whether such a limitation should be included in this agreement. Section 9 of the proposed agreement contains the further provision that Pacific may serve such customers directly, and that Southwest will not enter opposition to any request by Pacific for a certificate from this Commission to serve such customers. The staff took issue with these provisions, questioning as to whether or not they were intended to obstruct the Commission's jurisdiction in determining what utility should render service to interruptible customers in the Southwest territory whose use would be in excess of 2 million cubic feet a day.

3. The Commission staff questioned the propriety of the provision of a rate for interruptible gas in the contract rather than in the filed tariffs of Pacific (set forth in Section 8 of the proposed agreement). It was the suggestion of the Commission's staff that this rate should be combined with Schedule No. G-64 or filed separately as another schedule and not be incorporated in the service contract. Witness for Pacific stated that Pacific would place the interruptible rate in filed tariff form if the Commission so desired. We have repeatedly held that, where practical, all rates for utility service should be filed in tariff schedule form rather than in special contracts, and the order herein will so provide.

4. The staff representative brought out that there was nothing in the proposed agreement to prevent the rate to be paid by Southwest for interruptible gas from rising above the rate to be paid for firm gas. Witness for Pacific conceded that such an occurrence would be possible but would not be reasonable. The order herein will provide that the rate paid by Southwest for interruptible gas shall at no time be higher than the then effective rate paid for firm gas.

5. The contract appears to provide, and the applicants appeared to contend, that the effective date of this agreement, if authorized by this Commission, would be the date of its execution, May 23, 1955. The order herein will provide, as required by Section X of General Order No. 96, that the effective date of this agreement shall be the effective date of this order.

6. Witness for Southwest admitted that certain changes would be required in Southwest's Interruptible Schedule No. G-30 in order to show clearly that the rate therein is dependent on the price paid by Southwest for interruptible gas. The order herein will provide for such changes.

7. In Southwest's proposed Rule and Regulation No. 19, the limitation on service to customers having requirements in excess of 25,000 cubic feet per day is made applicable only to firm customers. The staff questioned Pacific's witness regarding the policy to be followed in Pacific's review of cases submitted to it in accordance with the rule, in which Southwest finds that service in excess of 25,000 cubic feet per day is justified.

The witness stated that Pacific would apply the same criteria to such requests in Southwest's area as it applies to similar requests within its own service area under its similar Rule and Regulation No. 19. It is noted that the proposed Rule and Regulation No. 19 of Southwest contains no limit on service to interruptible customers having a requirement under 2 million cubic feet per day, other than Southwest's judgment as to whether or not such service would jeopardize firm service to its domestic customers. On the basis of this testimony, the proposed rule appears reasonable and will be authorized, subject to the reservation, discussed below, as to the limitation on service to interruptible customers having a requirement in excess of 2 million cubic feet per day.

Conclusions

We wish to make it quite clear in this instance that ^{omission} authorization is made with the understanding that this agreement represents only a working arrangement between the parties.

We do not in any sense or degree infer that this authorization shall be interpreted as an acceptance by the Commission of the assumption that Pacific has any right, by contract with Southwest, to limit the territory in which Southwest may retail gas purchased from Pacific or the quantity of gas which may be sold by Southwest to any interruptible customer.

The agreement contains, in Section 14, a recognition of the fact that it shall at all times be subject to such changes or modifications by the Commission as it may from time to time direct in the exercise of its jurisdiction. In authorizing the carrying out of this contract, therefore, we put the parties on notice that such authorization cannot lawfully, and is not intended to, limit this Commission in any way in its authority in the future to authorize any service by Southwest which may be justified by public convenience and necessity or which may be provided by law, regardless of any apparent prohibitions of such service by the terms of the contract herein authorized. The Commission withholds its approval of any such apparent prohibition.

O R D E R

The above-entitled application having been considered, a public hearing having been held, the matter having been submitted and now being ready for decision, therefore

IT IS HEREBY ORDERED that applicants be and they are authorized to carry out the terms and conditions of the written agreement dated May 23, 1955; as set forth in Exhibit A attached to and made a part of the application, and to render the service described therein under the terms, charges and conditions stated therein, subject to the limitations and qualifications as set forth in the above opinion, such agreement to be effective on and after the effective date of this decision.

IT IS HEREBY FURTHER ORDERED that applicants shall:

1. File with the Commission, within thirty days after the effective date of this decision, four certified copies of the contract as executed, together with a statement of the date on which the contract is deemed to have become effective.
2. Notify this Commission of the date of termination of said contract within thirty days from and after said date of termination.

IT IS HEREBY FURTHER ORDERED that Pacific Gas and Electric Company shall:

1. File with this Commission, within ten days after the effective date of this order and in conformity with General Order No. 96, a revision of its wholesale Schedule No. G-64 for resale service to Southwest Gas Corporation, in a form acceptable to the Commission, incorporating such changes as are necessary to bring it into agreement with the rates and conditions authorized herein. Pacific shall incorporate the rates and special conditions applicable to the sale of gas for interruptible usage in such revised Schedule No. G-64, or may file a separate schedule for such service, in a form acceptable to the Commission. The special conditions applicable to such rate for interruptible gas shall contain a provision to the effect that the effective rate for such interruptible gas shall at no time be higher than the then effective rate for firm gas.
2. Refile, within ten days after the effective date of this order, its Gas Service Contract form, Schedule No. G-64, to conform with the contract authorized herein.

IT IS HEREBY FURTHER ORDERED that Southwest Gas Corporation shall:

1. Withdraw and cancel its Rule and Regulation No. 31, now on file with this Commission, and file in quadruplicate with this Commission, within ten days after the effective date of this order and in conformity with General Order No. 96, the proposed Rule and Regulation No. 19 set forth as Exhibit E, attached to and made a part of the application, and submitted as Exhibit 13 at the hearing.

2. File with this Commission, within ten days after the effective date hereof, a revision of its interruptible Schedule No. G-30, in a form acceptable to the Commission and in conformity with General Order No. 96, incorporating such changes as are necessary to recognize the fact that the effective rate therein is dependent upon the price paid by Southwest for gas purchased for interruptible resale.
3. File with this Commission, within ten days after the effective date hereof and in conformity with General Order No. 96, revised Preliminary Statement and Map of Service Area to include the territory authorized to be served with natural gas by Decision No. 51837.

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

Dated at San Francisco, California, this 6th day of SEPTEMBER, 1955.

John E. Mitchell
President
Matthew J. Dooley
R. Hardy

Ray E. Untermyer Commissioners
Commissioner Matthew J. Dooley, being necessarily absent, did not participate in the disposition of this proceeding.