

Decision No. 58677

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
PACIFIC LIGHTING GAS SUPPLY COMPANY
for a finding and order under Section
701 of the Public Utilities Code that
Applicant has been diligent in devel-
oping and negotiating long term gas
purchase contracts, that same are in
the public interest, and that the
prices therein contained are reasonable.

Application No. 41004

(Appearances and Witnesses are listed in Appendix A)

OPINION AND ORDER DISMISSING APPLICATION

Applicant's Request

Pacific Lighting Gas Supply Company filed the above-entitled application on April 3, 1959, requesting that the Commission issue an order finding: (1) that applicant, in developing and negotiating the form of agreement covered by this application has been diligent to protect the welfare of its customers and all of their customers, and that the execution by applicant of agreements similar in form for gas production in California is and will be in the public interest; and (2) that the price provisions of such agreement represent the lowest reasonable prices for which applicant's needs for an adequate supply of California source gas can be satisfied.

Public Hearings

After due notice, public hearings were held upon this application before Commissioner Matthew J. Dooley and/or Examiner Manley W. Edwards on April 28 and June 4, 1959, in Los Angeles.

Applicant presented two exhibits and testimony by one witness in support of its application. The Commission staff analyzed applicant's request, conducted certain cross-examination of applicant's witnesses and made a motion to dismiss the application on the following basic grounds:

1. That the management of applicant has the duty to negotiate contracts for purchase of gas and cannot pass this responsibility on to the Commission. 1/
2. That the determination of reasonable prices to be paid for gas by applicant should be adjudicated in a subsequent rate case.
3. That there is no need to depart from the established procedure of the Commission and issue such an order as a pre-trial order, advisory order, or an order in advance of case or controversy.

Applicant's Position

Applicant refers to Decision No. 57598 of this Commission, rendered in Application No. 40079, wherein applicant is required to take all necessary steps to resist unwarranted increases in field prices of gas purchased inside and outside of the State of California, and states that until recent years its policy was to enter into contracts with California producers for relatively short periods of time, usually three to five years. In recent years it has attempted to lengthen its purchase contracts with California producers to ten years or longer, but now is of the opinion that longer terms are highly desirable to protect its gas supply. Applicant states that it has developed and negotiated a form of long-term agreement for the purchase of natural gas produced in California, and, in effect, asks for a declaratory decision and approval of the form of this long-term contract prior to incurring major obligations thereunder.

1/ The staff referred to Pacific Telephone and Telegraph v California Public Utilities Commission, 34 Cal 2d, page 822, decided February 1950, which held that the Public Utilities Act does not, however, specifically grant to the Commission power to regulate the contracts by which the utility secures the labor, materials and services necessary for the conduct of its business whether such contracts are made with affiliated corporations or others.

Applicant asserts that in no sense is its management attempting to avoid its duty or responsibility to obtain gas at the lowest prices; that it is not attempting to pass its duty or responsibility on to the Commission; and that this application is intended as proof that it has fully and fairly complied with the mandate in the Commission's Decision No. 57598.

Contract Price Provisions

A copy of the proposed form of contract is set forth in Exhibit B to the application and contains the following price provisions:

July 1, 1959 through December 31, 1959	- 25 cents per Mcf
January 1, 1960 through December 31, 1960	- 27 cents per Mcf
January 1, 1961 through December 31, 1961	- 29 cents per Mcf
January 1, 1962 through December 31, 1969	- the border price*
January 1, 1970 and thereafter	- the border price (subject to certain discounts of roughly 3 cents per Mcf if oil company gives ten-year termination notice)

*The weighted average rate of out-of-state gas purchased by applicant, the Southern California Gas Company and the Southern Counties Gas Company of California at the state border between California and either Nevada or Arizona, assuming 100% load factor, derived from the rates that are in effect January 1st of each year of the term hereof in accordance with tariff schedules filed with the Federal Power Commission.

Findings and Conclusions

We have carefully considered the evidence of record and the positions of the parties, including the position taken by the staff of the Commission. It is a general rule of regulatory law that contracts such as the contracts here concerned are not subject to approval or disapproval by a regulatory body unless there is specific statutory authority to that effect. There is an exception to this general rule which arises where a contract into which a public utility has entered or intends to enter results or will result in disabling the utility from performing its public duty.

In this latter instance, general regulatory law authorizes the regulatory body to regulate such a contract. The contracts now before us are not of that character.

We are fully aware of the admonition which the Commission gave to the applicant in Decision No. 57598 in Application No. 40079 to the effect that applicant is required to take all necessary steps to resist unwarranted increases in field prices of gas purchased inside and outside the State of California. Such admonition was merely a restatement of the existing and continuing duty which the law places upon applicant and all other public utilities. In other words, a utility is bound to exercise reasonable diligence and prudence to secure its supplies and services at the least cost so as to lighten the burden upon its ratepayers. The admonition of this Commission created no new rule of law.

We are not unmindful of the objective sought by the applicant, and we hasten to offer the thought that applicant is to be commended for what it is here attempting to do. However, the Commission must remain within the bounds of regulatory law even though a requested action on its part which transcends such bounds might appear to be in the public interest. Should the Commission, in the present state of the law, undertake to make a finding that the proposed contracts into which applicant intends to enter are reasonable or consistent with the public interest, it is feared that such finding would be misleading and productive of misunderstanding when a rate proceeding should hereafter arise. While we recognize the rule of law that the approval by a regulatory body of a purchase contract of a utility does not bind such body to recognize, for the purpose of rate fixing, the full expense charge incurred pursuant to such contract, nevertheless, the approval of this type of contract

by a regulatory body increases the difficulties which confront such body when rates are being prescribed.

In the light of the foregoing and the present state of the law, we find that it would not be in the public interest for this Commission to pass upon the reasonableness or the consistency with the public interest of these gas purchase contracts now before us. Therefore, the staff's motion to dismiss the instant application will be granted.

Based upon the foregoing findings and conclusions,

IT IS ORDERED that the motion made by the staff of the Commission to dismiss the above-entitled application be and the same is hereby granted and said application be and the same is hereby dismissed.

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

Dated at San Francisco, California, this 29th
day of June, 1959.

E. J. Fox
President
W. E. Spitzer
W. E. Spitzer
Therese Heiner
Everett R. Rye
Commissioners

APPENDIX A

LIST OF APPEARANCES

FOR APPLICANT: O. C. Sattinger and J. R. Elliott

FOR INTERESTED
PARTIES:

T. J. Reynolds, H. P. Letton, Jr., and
L. T. Rice, for Southern California Gas
Company.
T. M. Chubb, Chief Engineer and General Manager,
Department of Public Utilities and Transpor-
tation, and M. Kroman, for the City of
Los Angeles.
Henry E. Jordan, Chief Engineer-Secretary, for
Bureau of Franchise and Public Utilities.
J. J. Deuel and William L. Knecht, for California
Farm Bureau Federation.
Brobeck, Phleger & Harrison, by Gordon E. Davis
and Robert N. Lowry, for California Manufacturers
Association.
Rollin E. Woodbury and Harry W. Sturges, Jr.,
by Rollin E. Woodbury, for Southern California
Edison Company.
Donald J. Carman, for California Electric Power
Company.
Overton, Lyman & Prince, by Donald H. Ford, for
Southwestern Portland Cement Company.
Chickering & Gregory, by Sherman Chickering and
C. Hayden Ames, for San Diego Gas and Electric
Company.
H. G. Dillin, for San Diego Gas and Electric
Company.
W. D. MacKay, for Challenge Cream and Butter
Association.

FOR THE COMMISSION

STAFF: Martin J. Porter and Kenneth J. Kindblad.

LIST OF WITNESSES

Evidence was presented on behalf of the
applicant by: Raymond W. Todd.