

ORIGINAL

Decision No. 62076

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SOUTHERN CALIFORNIA GAS COMPANY, a)
corporation, for an order pres-)
cribing and fixing the area to be)
hereafter served by it within)
Kern County.)

Application No. 43146
(Amended)

In the Matter of the Application of)
PACIFIC GAS AND ELECTRIC COMPANY)
for authority to carry out an)
agreement dated February 6, 1961)
with CONTINENTAL CARBON COMPANY for)
the sale of natural gas.)

Application No. 43217

Harry P. Letton, Jr., L. T. Rice and Reginald L. Vaughan, for Southern California Gas Company, applicant in Application No. 43146 and protestant in Application No. 43217.

F. T. Searls, Malcolm A. MacKillop, John S. Cooper and John C. Morrissey, for Pacific Gas and Electric Company, applicant in Application No. 43217 and protestant in Application No. 43146.

William L. Knecht, for California Farm Bureau Federation; and J. F. Nail for Rollin E. Woodbury of Southern California Edison Company, interested parties.

Melvin E. Mezek and Harold J. McCarthy, for the Commission staff.

O P I N I O N

Nature of Proceeding

Southern California Gas Company, ^{1/} by Application No. 43146 filed on February 10, 1961, and as amended on March 21, 1961, requests (1) that the Commission prescribe and fix an area described in the application as the area to be hereafter exclusively served by Southern within Kern County; and (2) that in the event the Commission

^{1/} Hereinafter sometimes referred to as Southern.

should find and conclude that a new plant of Continental Carbon Company^{2/} is located within Southern's service area in Kern County, the Commission issue an order authorizing Southern to carry out the terms of an agreement to be entered into with Continental in substantially the same form as the agreement attached as Exhibit A to Application No. 43146.

Pacific Gas and Electric Company,^{3/} by Application No. 43217 filed on March 9, 1961, requests an order of the Commission authorizing it to carry out the terms and conditions of a contract dated February 6, 1961, with Continental Carbon Company. This agreement provides for the sale of interruptible gas under Schedule G-50, except for certain standby requirements, to Continental's new carbon black plant now under construction some 11 miles west of Bakersfield at Bellevue and Superior Roads in Kern County. A copy of the agreement is attached to the application as Exhibit A.

The issue of immediate concern is which of the gas corporations, Southern or Pacific, should be authorized to serve the natural gas requirements of Continental commencing in June 1961.

Public Hearing

At the conclusion of ten days of public hearing held before Commissioner Peter E. Mitchell and/or Examiner William W. Dunlop, Application No. 43217 and the second prayer in Application No. 43146 dealing with Continental were taken under submission on May 4, 1961. Southern opposed the granting of Pacific's Application No. 43217.

This opinion and order relates to the issue of natural gas service to Continental's Kern County plant. Other issues raised by

^{2/} Hereinafter sometimes referred to as Continental.

^{3/} Hereinafter sometimes referred to as Pacific.

Application No. 43146 and Case No. 7088^{4/} are not here decided, said matters having been continued for possible further hearings following decision on the Continental issue.

The record on the issue here to be decided includes 1,276 pages of transcript, 71 exhibits, and testimony by six witnesses on behalf of Southern and six witnesses on behalf of Pacific. The Commission staff confined its participation in this phase of the proceedings to cross-examining witnesses. The staff did not take a position on the issue of service to Continental.

Results of Negotiations

At the suggestion of the presiding commissioner at the hearing on April 5, 1961, representatives of Southern and of Pacific conferred on April 6, 11, 12 and 18, 1961, in an effort to reach agreement regarding service areas in Kern County and particularly as to service to Continental Carbon Company and to an area known as Stockdale Development west of Bakersfield. The parties reported at the hearing on April 19 that, while they had generally agreed future negotiations regarding service in Kern County would be based on five principles as set forth in Exhibit No. 35, they were not in agreement with respect to the application of these principles to the Stockdale Development or to the Continental Carbon Company areas and their inability to reach agreement was primarily attributable to the question of who should supply natural gas service to Continental. The five principles generally agreed to by the parties as set forth in Exhibit No. 35 are as follows:

^{4/} Case No. 7088 was filed on March 29, 1961, by Southern California Gas Company against Pacific Gas and Electric Company; was consolidated for hearing with Applications Nos. 43146 and 43217 on April 19, 1961; and relates to a request by Southern that Pacific be directed to provide a tap on its Topock-Milpitas Line No. 300-B in Kern County for use by Southern.

1. In areas where either company has a distribution or transmission main, an agreed distance, perhaps a half mile or a mile from these mains, would be considered the service territory of the company owning the main. Where mains crossed, the pioneer main would retain the service area on either side of such main at the crossing.

2. In congested areas where such service areas overlap, a definite boundary line would be drawn. This line might be modified from time to time by agreement of the parties, to accommodate special growth situations.

3. In those areas of Kern County where no mains are installed, the territory would be considered open, and customers would be served by the company best prepared to render service at the time there was an application for service.

4. Where the application of these principles results in small open areas, such areas will be closed and become the service area of the company which should logically serve.

5. In open territory where an area is projected for development, the companies will meet to discuss suitable boundary lines in order to facilitate advance planning for service to the area.

Southern and Pacific have indicated that following decision on the question of which utility should serve Continental, further negotiations would be undertaken by the parties to see if the other issues in the proceedings could be resolved, failing in which, hearings would be resumed.

Continental's New Kern County Plant

Continental's new plant in Kern County is under construction and is scheduled to commence operations in June, 1961. The plant is located in unincorporated area near the intersection of Bellevue and Superior Roads, in the northwest corner of Section 6,

Township 30 South, Range 26 East, Mount Diablo Base and Meridian.

At this new plant Continental plans to manufacture a high grade carbon black by a modern process for use primarily in the tire industry. Exhibit No. 26 shows that the carbon black is to be produced in a refractory lined reactor by combustion of heavy residual oil; that to obtain proper combustion in the reactor, energy in the amount of 8 to 10 million Btu's per hour per cubic foot of combustion space is required; that to date, no source of energy other than natural gas has been developed which will produce this volume of energy; that other sources of energy have been tried but reaction obtained therefrom does not yield quality products; and that it is not feasible to install any standby facilities for reactors.

A representative of Continental responsible for obtaining land, feed stock, natural gas, electricity and a rail siding for the new plant testified that he started contacts with both Southern and Pacific as early as 1956 in order to acquire a natural gas supply; that these contacts had been kept up to the present time; and that on the basis of his studies of the relative merits from Continental's point of view of obtaining gas service from Southern as compared with receiving gas service from Pacific, he had recommended that Continental apply for interruptible gas service from Pacific.

Continental's representative stated the following reasons for his selection of gas service from Pacific:

1. Pacific had two 34-inch pipelines from which service could be provided while Southern had one 10-inch and one 12-inch pipeline.
2. Pressures in Pacific's 34-inch pipelines were over 600 pounds per square inch while pressure in Southern's lines approximated 400 pounds per square inch.

3. Southern serves the Los Angeles Area in which Rule 62 of the Los Angeles Air Pollution Control District requires the use of gas rather than oil during certain months of the year.

4. Interruptions to interruptible customers over the past 10 years have been substantially less on Pacific's system than on Southern's system.

5. Continental's plant engineers expressed a preference for Texas gas which would flow from Pacific's 34-inch line. Continental's engineers were familiar with that type of gas, having operated with it before.

Exhibit No. 5 reveals that if the Commission determines that Continental's new plant is located in an area to be supplied gas by Southern, Continental would be willing to negotiate proper contracts with Southern.

Continental's representative further testified that the use of natural gas at firm rates would make the new plant completely uneconomical to operate in the production of carbon black; and that if its gas service is interrupted, plant operations will be shut down but its employees will not be laid off but will be kept on to do plant maintenance work and other jobs.

Pacific-Continental Contract

On February 6, 1961, Pacific entered into a written contract with Continental for interruptible natural gas, the principal provisions of which are hereinafter summarized.

Pacific agrees, among other things, to sell and deliver quantities of interruptible natural gas at rates of flow up to 2,500,000 cubic feet per day for use as fuel and also as raw material in combination with oil in the production of carbon black and allied petrochemical products on the premises of Continental's plant now

under construction in Kern County. The contract shows that Continental's new plant, when completed, will include twelve reactors, six rotary dryers, two boilers, one salt bath heater and four oil heaters.

Gas service to be rendered under said contract is to be in accordance with Pacific's Schedule No. G-50, Interruptible Natural Gas Service, except that Continental is not required to provide standby facilities for that portion of its interruptible natural gas requirements to be used as a raw material with oil in the reactors.^{5/} Continental agrees, however, to provide standby fuel and equipment for the operations not involving natural gas as a raw material.

The contract further provides that under no circumstances will Continental request or will Pacific provide gas service to Continental for any of its equipment under an interruptible schedule with priorities of curtailment differing in any manner from any other interruptible customer served under the same schedule during the period covered by said agreement.

In order to make interruptible gas service available to Continental, Pacific agrees to install facilities consisting of the enlargement of an existing tap in Pacific's transmission main No. 300-A, primary regulators, 7,035 feet of 4-inch distribution main to Continental's premises, 940 feet of 4-inch service pipe, service regulator, meters and other miscellaneous facilities associated therewith.

It is agreed and stipulated by Pacific and Continental that the estimated installed cost of Pacific's facilities to provide the service will not be in excess of the estimated annual revenue. Under such circumstances no charges for gas main extensions are to be assessed against Continental pursuant to Pacific's tariffs.

^{5/} In three other similar situations the Commission has authorized deviations of the type herein requested by Pacific as follows: Hercules Powder Company, Decision No. 50396 in Application No. 35524; California Ammonia Company, Decision No. 57466 in Application No. 40321; and Valley Nitrogen Producers, Inc., Decision No. 52321 in Application No. 40993.

The contract has an initial term of three years and thereafter is subject to annual renewal. Further, the contract contains the provision that it shall not become effective until the Commission, by its order, authorizes Pacific to carry out the terms and conditions thereof, and 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 addition to interruptible natural gas, Continental has signed contracts with Pacific for general natural gas for office and water heating under Schedule No. G-6 and for firm industrial natural gas under Schedule No. G-40. Electric service to the plant site is to be provided by Pacific.

Pacific also has received requests for firm gas service from three dwellings on Superior Road along the route of its proposed extension to serve Continental's plant and has agreed to serve such dwellings as soon as its extension has been installed to serve the plant.

Gas Facilities in the Vicinity of Continental's Plant

The evidence reveals that neither Pacific nor Southern have any gas mains within one-half mile of Continental's plant site. Pacific's nearest main is its 34-inch Milpitas to Topock transmission main No. 300-A, which is approximately 5,200 feet northeasterly from Continental's plant site at its nearest point. Pacific's main No. 300-A was placed in commercial operation on December 26, 1950, and is the main from which Pacific proposes to serve Continental. Pacific also has a parallel 34-inch main No. 300-B several hundred feet to the north of main No. 300-A and a 16-inch main No. 142 extending north from mains 300-A and B along Crawford Road

to a point one-half mile north of Rosedale Highway and thence east to Bakersfield.

Southern's closest main to Continental's plant site is 12-inch main No. 149 which is approximately 4,400 feet east of the plant site. This main was installed in 1937 and is the main from which Southern would serve Continental if Pacific's application is denied, and Continental negotiated a contract with Southern. Southern also has a 10-inch main No. 200 approximately one mile southeast of the plant site and a 6-inch main No. 205 approximately one mile west of the plant site. Main No. 200 was installed in 1913 and main No. 205 was installed in 1930.

Estimated Costs and Customer Charges

The following tabulation will serve to summarize the evidence respecting estimates of cost to Southern and to Pacific to provide facilities to serve Continental's new plant and estimates of customer charges for gas service.

	<u>Continental Served By</u>	<u>Southern</u>	<u>Pacific</u>
1. Nearest gas main to plant site	4,400 ft.	5,200 ft.	
2. Distance of proposed construction route	4,400 ft.	7,035 ft.	
3. Number of customers served	1	4	
4. Cost of facilities to serve Continental only	\$ 23,584	\$ 33,350	
5. Cost of facilities to serve Continental plus 3 customers on Superior Road	\$ 33,441	\$ 34,220	
6. Annual Gas Costs to Continental:			
Interruptible Service	\$336,112	\$328,176	
Firm Office	72	59	
Firm Industrial	2,711	2,602	
Total	<u>\$338,895</u>	<u>\$390,837</u>	
7. Annual gas costs to domestic customer on Superior Road assuming monthly consumption of 200 ccf	\$ 242	\$ 215	

No main extension charges would be applicable to Continental under service by either utility. Main extension charges would be applicable to the three dwellings along Superior Road if Southern served Continental by its proposed route but would not be applicable if Pacific served Continental by its proposed route.

Franchises and Certificates

Southern relies upon a franchise issued under Ordinance No. 163 of the Board of Supervisors of Kern County and upon Decision No. 19927 dated June 25, 1928, granting Southern a certificate to exercise that franchise to serve the unincorporated area in Kern County within which Continental's plant is located.

Pacific relies upon franchises issued under Ordinance No. 242 and Ordinance No. 372 of the Board of Supervisors of Kern County. The Commission by Decision No. 34492 dated August 12, 1941 (Application No. 23155) granted Pacific a certificate to exercise the franchise issued by Ordinance No. 242. Similarly, the Commission by Decision No. 34725 dated November 4, 1941 (Application No. 23896) granted Coast Counties Gas and Electric Company, later acquired by Pacific, a certificate to exercise the franchise issued by Ordinance No. 372.

The Commission's order in Decision No. 34492 relating to Ordinance No. 242 reads as follows:

"A public hearing having been had upon the above-entitled application of Pacific Gas and Electric Company, and the matter considered, and

"It appearing and being found as a fact that public convenience and necessity so require, it is ordered that Pacific Gas and Electric Company be and it is hereby granted a certificate to exercise the rights and privileges granted by the County of Kern, by Ordinance No. 242, adopted March 9, 1931, within such parts or portions of said county as are now served by it or as hereafter may be served by it through extensions of its existing system made in the ordinary course of business as contemplated by Section 50(a) of the Public Utilities Act, provided, further, that this certificate shall be subject to the following conditions:

"1. That extensions of Applicant's gas distribution lines in said County of Kern may be made only in accordance with such applicable rule or rules as may be prescribed or approved by the Commission and in effect at the time covering such extensions, or in accordance with any general or special authority granted by the Commission;

"2. That, except upon further certificate of this Commission first obtained, Applicant shall not exercise such franchise for the purpose of supplying gas in those parts or portions of said county now being served by Southern California Gas Company, Coast Counties Gas and Electric Company, and Commercial Land Company;

"3. That the Commission may hereafter, by appropriate proceeding and order, limit the authority herein granted to Applicant as to any territory within said county not then being served by it; and

"4. That no claim of value for such franchise or the authority herein granted in excess of the actual cost thereof shall ever be made by grantee, its successors, or assigns, before this Commission or before any court or other public body.

"The effective date of this Order shall be the twentieth day from and after the date hereof.

"Dated at San Francisco, California, this 12th day of August, 1941."

Decision No. 34725 relating to Ordinance No. 372 contains substantially the same conditions as contained in Decision No. 34492.

Position of Southern California Gas Company

Southern protests Pacific's application to furnish natural gas service to Continental and asserts that Southern has the exclusive right and duty to serve gas to Continental's plant site in Kern County and that Southern is entitled to protection against encroachment by Pacific.

Southern claims, among other things, as follows:

1. Southern has dedicated its service to the public generally in the area of Kern County in which Continental's plant is located by virtue of the filing of rates, rules and regulations and actual service therein.

2. The right of Southern to serve the Continental plant area has been recognized continuously by Pacific and by Pacific's predecessors.

3. Pacific has no right to serve Continental or the area surrounding it.

4. Certificates of public convenience and necessity issued under the franchises of Southern and Pacific respectively support the position of Southern as to its sole right to serve the area in which Continental's plant is located.

5. Boundary agreements entered into between Southern and Pacific initiated by Pacific recognize the right of Southern to serve the Continental area.

6. The record of extension of service by Southern to all applicants in contrast to the refusal until recently of service to applicants by Pacific supports Southern's dedication to public service throughout the entire area.

7. For many years Southern has had rate schedules which are applicable in the area of Continental's plant site. Southern's rates will provide the lowest over-all gas cost to Continental and Southern's investment to serve Continental will be lower than Pacific's.

8. Pacific does not have an interruptible schedule which is applicable in this area and Pacific's interruptible service would be more costly to Continental.

9. Although gas service has been rendered by Southern in the area for many years, it is still sparsely settled and it is no more than fair that when a profitable customer comes along Southern be permitted to serve the customer for the benefit of all consumers.

10. The fact that Pacific has an agreement with Continental should not be determinative nor have any bearing upon the issue in the proceeding because Continental has agreed to negotiate the same contract with Southern in the event the Commission determines that Continental's plant is located in the territory of Southern.

11. Evidence bearing upon public convenience and necessity has no materiality in a boundary dispute.

12. The Continental area is not open territory but is exclusively the area of Southern. Any doubts should be resolved in favor of Southern which has pioneered the area, has occupied it and has rate and extension rules in effect therein.

13. The use by Pacific of an existing tap on its Topock-Milpitas line to serve Continental would be unlawful.

Position of Pacific Gas and Electric Company

Pacific takes the position that its application should be granted and that the public interest requires that Continental's new plant in Kern County be supplied gas by Pacific. Among other things, Pacific claims:

1. Pacific has Kern County franchises under Ordinances Nos. 242 and 372 which permit it to install the proposed gas main in the county roads including Superior and Bellevue Roads, the location of Continental's plant site.

2. Since neither Southern nor any other public utility was in 1941, at the time the Commission issued certificates to Pacific to exercise the franchises granted by Ordinances Nos. 242 and 372, or is today supplying gas within a mile of Continental's plant site, Pacific has a certificate to serve the part of Kern County within which the plant site is located.

3. Southern has never installed facilities or provided gas service along Superior Road or Bellevue Road at its intersection with Superior Road.

4. Pacific is the only utility that has ever furnished gas service in this particular portion of Kern County, having provided firm gas service since 1959 to three customer's accounts at locations on Superior Road from an extension, 1,098 feet in length, supplied from Pacific's main 300-A.

5. Continental Carbon Company by signing its contracts for gas service with Pacific has expressed its preference for service from Pacific. Its selection of Pacific was made after consideration of all the circumstances. Continental considered and rejected the opportunity it had to commit itself to take gas from Southern.

6. Since Pacific has a certificate to serve the area in question and since Continental, as well as three other parties, have requested Pacific to furnish gas in the area, Pacific has an

obligation to serve under the doctrine in the Lakewood Park^{6/} and Meadow Valley Lumber Company^{7/} cases.

7. The so-called gentlemen's agreements concerning territorial boundaries in the immediate vicinity of Bakersfield do not preclude service to Continental by Pacific because the boundaries did not apply to undeveloped territory such as Continental's plant location and the boundaries were never approved by the management of either utility or authorized by the Commission.

8. Not until after Pacific had completed its negotiations with Continental did Southern determine that boundaries should be established and filed its application with the Commission.

9. Public interest is always a factor in any proceeding before this Commission.

10. If Pacific provides the service to Continental, three additional customers will receive gas without main extension charges and the customer (Continental) will receive service from the utility it has selected and believes will provide it the better service.

11. Pacific has an operating service base located about two miles from Continental's plant site. Southern has no comparable service base in Kern County.

12. Pacific's facilities in Kern County are generally larger and more extensive than Southern's. Pacific serves 52,767 customers within the county, 30,752 of whom are outside the City of Bakersfield, compared with 22,599 customers in Kern County served by Southern.

^{6/} Lakewood Park vs. Southern California Gas Company; 51 CPUC 184.

^{7/} Meadow Valley Lumber Company vs. Pacific Gas and Electric Company; 50 CPUC 270.

13. Pacific's rates for firm gas service applicable in the vicinity of Continental's plant site are lower than Southern's rates for firm service.

14. Pacific's interruptible Schedule G-50 applies, with some exceptions, generally throughout the entire territory served natural gas by Pacific. Said Schedule G-50 is not restricted to exclude Continental's plant site and would be applicable if Pacific extends its gas facilities to serve Continental's plant.

15. Pacific agreed to the elimination of the standby condition with reference to the use of interruptible gas in Continental's reactors because there is no feasible alternative for natural gas in the reactors and because there will be no layoffs of Continental's employees resulting from interruption.

Findings and Conclusions

The Commission has carefully weighed the evidence of record and has considered the statements of the parties with equal care and finds and concludes as follows:

1. Both Pacific and Southern desire to furnish natural gas to Continental's new plant in Kern County under essentially the same form of agreement, which among other things, provides for waiver of certain standby facilities in connection with interruptible gas service.

2. Pacific and Southern have been unable to reach agreement between themselves as to which utility should serve natural gas to Continental's plant and have asked this Commission to decide the issue.

3. The furnishing of gas to Continental's plant site either by Pacific or by Southern will require the extension of gas mains to the area.

4. The furnishing of gas service to Continental by either utility, to the exclusion of the other, would not result in duplication of gas facilities within the immediate area of the plant site and in our opinion would have no substantial adverse effect upon existing customers of either utility.

5. It would not be in the public interest to authorize both utilities to provide gas to Continental's new plant site in Kern County.

6. Continental has expressed a preference for gas to be furnished by Pacific and entered into a written contract with Pacific on February 6, 1961, for gas service.

7. Neither Southern nor any other utility was, in 1941, or is today, supplying gas in that part or portion of Kern County in which Continental's plant site or the three dwellings on Superior Road are located.

8. Pacific and Southern have franchises issued by the Board of Supervisors of Kern County and have certificates to exercise such franchises in that part or portion of Kern County in which Continental's plant site and the three dwellings on Superior Road are located.

9. The so-called boundary agreements alluded to by Southern were never approved by the management of either utility and were never authorized by this Commission.

10. The use by Pacific of an existing tap on its Topock-Milpitas line to serve Continental's plant site is not unlawful.

11. Pacific's Schedule G-50 would be applicable to the area of Continental's plant site if Pacific served the plant.

12. If Pacific serves gas to Continental's plant site, firm gas service without additional main extension charges also will be provided to residents of three dwellings on Superior Road who have requested firm gas service from Pacific.

13. There are no controlling factors revealed by this record which would compel this Commission to deny Pacific's application resulting in Continental's having to take gas service from Southern and in denying firm gas service to three dwellings on Superior Road except upon payment of substantial main extension charges.

14. The requested deviation from Special Condition No. 3 of Pacific's filed and effective Schedule No. G-50, to the extent that Continental is not required to provide standby facilities for that portion of its interruptible natural gas requirements to be used as a raw material in its reactors is not adverse to the public interest and should be authorized.

15. Pacific should be authorized to carry out the terms of its contract with Continental.

16. Southern's request contained in Prayer 2 of the Amendment to Application No. 43146 should be denied.

O R D E R

Based on the evidence of record and the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that:

1. Pacific Gas and Electric Company is authorized to carry out the terms and conditions of a written contract dated February 6, 1961, with Continental Carbon Company, a copy of which is attached to Application No. 43217 as Exhibit A thereof.

2. Pacific Gas and Electric Company shall file three certified copies of the agreement as executed, together with a statement of the date on which the contract is deemed to have become effective.

3. Pacific Gas and Electric Company shall notify this Commission of the date of termination of said contract within thirty days after said date of termination.

4. Prayer No. 2 of the Amendment to Application No. 43146 of Southern California Gas Company be and it hereby is denied.

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

Dated at San Francisco, California, this 31st day of May, 1961.

E. J. Fox
 President

George B. Hepler

Fredrick B. Hallock

 Commissioners

Everett C. McKeage
Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.