

**ORIGINAL**

Decision No. 66094

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 of the Commission under Section 1001 of the Public Utilities Code authorizing Applicant to construct and operate an extension of its system to supply natural gas service to the communities of Morongo Valley, Yucca Valley, Joshua Tree and Twentynine Palms, San Bernardino County, California, and authorizing Applicant to deviate from its Rule No. 20, Gas Main Extensions.

Application No. 45099  
(Filed January 9, 1963)

In the Matter of the Application of DESERT GAS CO., INC., a corporation, for an order of the Commission under Section 1001 of the Public Utilities Code authorizing Applicant to construct and operate an extension of its system to supply natural gas service to the community of Twentynine Palms, San Bernardino County, California, and to revise and deviate from its Rule No. 15, Gas Main Extensions.

Application No. 45340  
(Filed April 15, 1963)  
(Amended April 18, 1963)

(See Appearances on Appendix "A")

O P I N I O N

Southern California Gas Company (Southern California) seeks a certificate of public convenience and necessity under Section 1001 of the Public Utilities Code to extend its natural gas transmission and distribution system from a point northwest of Indio on its Blythe-Los Angeles pipeline at Garnet, in Riverside County, to furnish natural gas service to the communities of

Morongo Valley, Yucca Valley, Joshua Tree and Twentynine Palms and way points, and to the United States Marine Corps Base north of Twentynine Palms, all in unincorporated territory of San Bernardino County, in the so-called Morongo Basin of the Mojave High Desert. Establishment of rates for firm and interruptible natural gas service and authority to deviate from its Rule No. 20, Gas Main Extensions, are also sought.

Public hearings in Application No. 45099 were held before Examiner Warner on March 12, 13, and 14, 1963, at Twentynine Palms. Desert Gas Co., Inc., (Desert) appeared as protestant, and about 200 persons representing themselves, individually, and representing civic and community groups, appeared supporting the application.

On March 22, 1963, Desert applied for affirmative relief and asked that any certificate granted to Southern California be conditioned upon the latter furnishing Desert a supply of natural gas at a rate and pursuant to terms and conditions deemed by the Commission to be reasonable and appropriate in order to enable Desert to render natural gas service to the community of Twentynine Palms.

Desert seeks a certificate of public convenience and necessity to extend its vaporized liquid petroleum gas distribution system and to operate a natural gas system in the community of Twentynine Palms in its presently certificated LPG service area, plus some additional area.

Public hearings on a consolidated record were held before Examiner Warner on April 23, 24, 25, and 26, 1963, at Twentynine Palms. Southern California moved for dismissal of

Desert's application; about 125 persons attended and many appeared in support of Southern California's application; one supported Desert's application; the matters were argued orally and submitted for decision upon the filing of briefs, which were received on May 23 and 24, 1963.

Southern California proposes to construct a 6-inch transmission line about 43 miles in length from Garnet to Twentynine Palms, and four miles of 4-inch transmission main to serve the Marine Corps Base. Southern California proposes to deviate from its Rule No. 20 and to limit the initial extension of distribution mains (excluding the trunk line) to an average of 120 feet per prospective customer, and during an initial three-year period, and subsequent to the initial extension of distribution mains, applicants for service would be granted 120 feet of main or the allowances provided in Rule No. 20, whichever is the greater.

Southern California estimates that there will be 2,331 residential and commercial customers at the end of the first full year of service; sales thereto will be 199,874 mcf and revenue therefrom will be \$324,394. In addition, the Marine Corps Base firm load will be 146,387 mcf and revenue therefrom will be \$97,569, resulting in total sales of 346,261 mcf, and total revenue of \$421,963.

Estimated cost of Southern California's facilities, including pro rata of general plant (\$42,200) and pro rata of intangible plant and working capital (\$5,000) is \$1,476,900. Average rate base for the first full year of service, after deducting

excess service donations (\$28,500) and average depreciation reserve (\$16,400), is estimated to be \$1,432,000. Estimated rate of return is 4.19 percent.

At the end of the third year, total number of residential and commercial customers will have increased to 2,740 and the revenue therefrom to \$378,693; by the end of the fifth year, to 3,226 customers and revenue therefrom to \$443,209, each excluding sales to the Marine Base of \$97,569. The rate of return at the end of the third year, on an estimated rate base of \$1,507,900, is 4.56 percent, and at the end of the fifth year, on an estimated rate base of \$1,602,900, is 4.92 percent.

Southern California's requested service area, within which it proposes to furnish natural gas service to all applicants according to its filed tariffs, is delineated on a map, which is a part of Exhibit 8 designated "Proposed High Desert Rate Area 121, Firm Service Schedule No. G-7.1" (changed to G-8 to avoid confusion).

In its application for affirmative relief, its protest to Southern California's application, and in its own application, Desert asked the Commission to require Southern California to wholesale gas to it at rates proposed in Southern California's Schedule No. G-8. However, in its closing argument at the hearing on April 26, 1963, Desert amended its position and requested the Commission to require Southern California to wholesale gas to it at rates to be set by the Commission which would produce a rate of return on Desert's rate base in the Twentynine Palms area no greater than the rate of return which would be produced by

Southern California's proposed Schedule No. G-8 on Southern California's rate base for the balance of the Morongo Basin.

By Decision No. 49642, dated February 9, 1954, in Application No. 34558, Desert was granted a certificate of public convenience and necessity to construct and operate a public utility gas system for the distribution and sale of liquefied petroleum gas in and about the community of Twentynine Palms and to exercise the rights and privileges granted by San Bernardino County Ordinance No. 715, adopted June 6, 1953. The area to which the franchise applies is more particularly described as the area within the County of San Bernardino, bounded on the south by Sullivan Road, on the east by Utah Trail, on the north by Three Mile Road, and on the west by Morongo Road, Township 1N, Range 9E, S.B.B.&M.

Between February, 1954, and December, 1962, Desert's liquid gas distribution system and service were confined to approximately 156 customers in the so-called Adobe Road tracts. Beginning in 1951, and subsequently, Southern California, at the request of representatives of chambers of commerce and service and civic groups, conducted surveys of the Morongo Basin to determine the economic feasibility of extending its pipelines into and furnishing natural gas service in the Morongo Basin. In the early part of September, 1962, Southern California was again approached by said representatives who again requested Southern California to bring natural gas to the area. Southern California approached Desert seeking a basis to purchase Desert's system. Desert asked Southern California to wholesale natural gas, and Southern California

declined. Desert put a price on its system reflecting its value of tank gas customers in the area. Southern California's purchase offer was based on depreciated book value plus 10 or 15 percent. Negotiations were continued, but while pending, Desert made a hasty and incomplete survey of downtown Twentynine Palms and commenced installing a distribution system in that area. By April, 1963, and while the hearings were in progress, Desert completed its downtown expansion and more than doubled its distribution pipeline footage, all the while conducting an intensive newspaper and radio campaign to solicit public support for its position alleging, among other things, that "outside interests were attempting to destroy its operations". Both Southern California and Desert commenced soliciting and accepting applications for natural gas service. By April 1, 1963, Desert had established 168 locations on its downtown installation, with 99 active users and 48 vacancies served from a 30,000-gallon storage tank through vaporizers. Desert estimated that at the end of the first year, it would be serving 1,309 residential and commercial customers in Twentynine Palms, and that this number would increase to 1,848 by the end of the fifth year. Its original gas plant totaled \$37,124, to which was added \$62,000 of gas plant in downtown Twentynine Palms in 1962. Desert estimated that it would require approximately \$311,000 of additional gas plant to serve the estimated number of customers at the end of the first year. By utilizing Southern California's Schedule No. G-8, Desert estimated its rate of return at the end of the first year would be 5.6 percent on a rate base of \$415,478, and at the end of the fifth year, 7.0 percent

on a rate base of \$504,743. Desert does not intend to serve the Marine Corps Base, although Petrolane sells bottled (tank) LPG to the Base under annual contract (two out of the last five years).

Desert is a wholly owned subsidiary of Petrolane Gas Service, Inc., an LPG and chemical fertilizer distributor operating in three midwestern states, 11 western states, and Alaska, Canada and Mexico, with sales in excess of \$27,000,000 during 1962 and assets totaling \$22,171,000 as of September 30, 1962. Petrolane also owns Bert King Butane Company (Bert King), which serves the Twentynine Palms area with bottled gas by delivery to individual consumers. The record shows that about 400 of Bert King's customers would not be served natural gas. The latter's sales and service area extends from about three miles east of Joshua Tree to Amboy, which is 50 miles northeast of Twentynine Palms.

Many residents of Twentynine Palms, who were Bert King's customers, confused Desert's present and proposed operations with the tank gas service they were receiving, and complained about lack of promptness in making deliveries, lack of attention to gas appliances, violent fluctuations in prices for tank gas to meet local competition, and general dissatisfaction with Desert and Bert King's local management. Many of these complaints caused the public bodies to approach Southern California requesting the latter to enter the area with natural gas service. A Twentynine Palms community council, with representatives of churches, service groups, professional groups, and trade associations, acting as an informal and unofficial city council, invited all dispensers of utility services in Twentynine Palms to explain

and go over the high cost of utility services. Neither Desert nor Bert King responded to any such invitation.

It is clear that natural gas service in the Morongo Basin is needed and that Southern California's application has universal public support. It would provide natural gas air conditioning service, which Desert's application does not provide for, and with the proposed service to Twentynine Palms and the Marine Corps Base, would be economically feasible, whereas Desert's application has not been so shown.

The question then remains: Should Southern California be certificated to furnish natural gas in the Morongo Basin, including the Twentynine Palms area, and Desert's application for certificate be denied? We believe so.

In Re Oro Elec. Corp. 2 C.R.C., 748 (1913), this Commission held that in all applications thenceforth on the part of one public utility to enter the territory being served by another public utility of like character, the Commission would look, not only to the existing utility, but also to the manner in which an applicant has fulfilled its duties to the public and complied with its representations to the Commission with reference to territory which it may be serving. It also held that a wise public policy demands that utilities which are doing their full duty to the public shall be treated with fairness and justice and liberality, and they shall receive such protection to their investments as they may deserve, subject always to the contingency that if another utility can, by reason of superior natural advantages or patented processes or other means, give to the public a service as good as



the existing utility, at rates materially less, the interests of the public must be deemed paramount and the new utility must be given an opportunity to serve the public. Our so-stated policy has not changed.

Here, Desert has clearly neglected its duties under its certificate to distribute liquid petroleum gas through its pipelines in Twentynine Palms. No such service was furnished to the downtown area until December, 1962; no air conditioning service was furnished; and the record is not at all clear whether Desert could furnish natural gas in the Twentynine Palms area economically, even if Southern California elected to dedicate itself to furnish natural gas service on a wholesale basis to Desert. We do not know why Desert did not expand its Twentynine Palms system between 1954 and the end of 1962. It could be that it was because it was more profitable to Petrolane for Bert King to sell tank gas than for Desert to sell vaporized gas through its public utility distribution pipeline system. It is clear, however, that Desert's hasty distribution pipeline expansion between December, 1962, and April, 1963, was initiated by Southern California's announced proposal to enter the field. In the case of Pacific Gas and Electric Company vs. Great Western Power Company, 1 C.R.C. 203 (1912), the Commission established the principle that it would judge the two utilities as of the day when the new utility filed its application with this Commission, so that a utility desiring to be protected in the way of competition must do its full duty to the public before and not after the newcomer knocks at the door. This principle has not changed.

Findings

We find that:

1. Southern California possesses the necessary gas supply and is ready and able to furnish natural gas service to the Morongo Basin through a transmission and distribution system to be constructed by it from Garnet to the Marine Base at Twentynine Palms; such gas service can be rendered economically by Southern California and its proposed Schedule No. G-8, Firm Natural Gas Service, and Schedule No. G-50, Interruptible Natural Gas Service, will not produce an excessive rate of return; Southern California's proposal to deviate from its Rule No. 20 is reasonable; and the service offered to natural gas customers by Southern California is superior to that offered by Desert.

2. Desert possesses no natural gas supply; it has not shown the economic feasibility of its proposal to furnish natural gas service; and its liquid petroleum gas service, distributed through pipelines in the Twentynine Palms area, has not met and will not meet the needs of the residents of the community of Twentynine Palms.

3. To grant Desert's application for affirmative relief, and thereby require Southern California to wholesale natural gas to Desert for sale and distribution by the latter in Twentynine Palms, would result in a "shoestring" operation segregating Southern California's proposed operations in the Morongo Basin, including service to the Marine Base. It would be uneconomical and would not be in the public interest. Furthermore, as noted

heretofore, Southern California has not held itself out to furnish wholesale service in its application to furnish gas to the high desert and would not exercise a certificate granted to it with that condition.

4. Public convenience and necessity require that Southern California's application be granted.

5. Desert has failed to show that public convenience and necessity require the granting of its application for affirmative relief and its application in chief, as amended.

Based upon the findings set forth herein the Commission concludes that Southern California's application should be granted and that Desert's application should be denied.

The certificates of public convenience and necessity issued herein are subject to the following provision of law:

The Commission shall have no power to authorize the capitalization of the franchises involved herein or these certificates of public convenience and necessity, or the right to own, operate or enjoy such franchises or certificates of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the issuance of such franchises, certificates of public convenience and necessity or right.

Certificates of public convenience and necessity to exercise the franchise rights and privileges granted to Southern California Gas Company by Ordinance No. 272 of Riverside County and Ordinance No. 497 of San Bernardino County contained the restrictions in Decision No. 34844, dated December 9, 1941, in Application No. 24484 and Decision No. 34728, dated November 4, 1941, in Application No. 24319, respectively, against Southern California's

exercising such franchises for the purpose of supplying gas within those parts or portions of said counties then being served with gas by any other public utility except upon further certificate of this Commission first obtained. Such restrictions should be removed hereinafter as appropriate.

The action taken herein is for the issuance of a certificate of public convenience and necessity only and is not to be considered as indicative of amounts to be included in a future rate base for the purpose of determining just and reasonable rates.

Rejection and Denial of Applications to  
File Amicus Curiae Briefs and Statements

On June 19, 1963, South Tahoe Gas Co. (South Tahoe) filed an amicus curiae brief which was rejected on June 20, 1963. Also a letter from Western Liquid Gas Association (Western), dated June 24, 1963, regarding the instant applications, was returned by the Commission to said Association. On July 3, 1963, South Tahoe applied for leave to file a brief as amicus curiae and by its letter, dated July 15, 1963, Western applied for leave to file a statement as amicus curiae. None of the briefs or statements can be or have been considered by the Commission inasmuch as neither of the applicants was a party to the proceedings and the matters were submitted for decision upon the filing of briefs by parties of record on May 23 and 24, 1963, as heretofore noted. The applications of South Tahoe and Western are denied.

O R D E R

IT IS ORDERED that:

1. Southern California Gas Company is granted a certificate of public convenience and necessity to extend, construct and operate a natural gas system in its High Desert Rate Area 121, delineated on the map attached to Exhibit No. 8, and including, but not restricted to, the unincorporated communities of Morongo Valley, Yucca Valley, Joshua Tree, Twentynine Palms, and the United States Marine Corps Base at Twentynine Palms, and way points in unincorporated territory of Riverside and San Bernardino Counties, all as set forth in Appendix B, attached to this order.

2. Southern California Gas Company is granted a certificate of public convenience and necessity to exercise the franchise rights and privileges of Ordinance No. 272 of Riverside County and Ordinance No. 497 of San Bernardino County to supply gas in the area certificated in ordering paragraph 1 herein and to that extent the restrictions imposed by Decision No. 34844 dated December 9, 1941, in Application No. 24484 and Decision No. 34728, dated November 4, 1941, in Application No. 24319, are lifted. In all other respects, said decisions shall remain in full force and effect.

3. Southern California Gas Company is authorized to deviate in High Desert Rate Area 121 from the free footage allowances provided in its Rule No. 20, Gas Main Extensions, and to file after the effective date of this order the rule set forth in Appendix C attached to this order, to be effective on or before the date service is first offered to the public in accordance with the requirements of General Order No. 96-A. Such rule shall become effective upon five days' notice to this Commission and to the public.

4.(a) Southern California Gas Company is authorized to file after the effective date of this order its proposed Schedule No. G-8, Firm Natural Gas Service, set forth in Exhibit No. 8, and Schedule No. G-50, Interruptible Natural Gas Service, presently on file and in effect, revised as necessary to provide for the application of said schedule to the area certificated herein, to be effective on or before the date service is first rendered to the public, in accordance with the requirements of General Order No. 96-A.

(b) Southern California Gas Company shall file coincident with the filing authorized hereinabove revised tariff sheets, including tariff service area map, as are necessary to provide for the application of said tariff sheets to the area certificated herein in a manner acceptable to this Commission and in accordance with the requirements of General Order No. 96-A.

(c) Such rate schedules and revised tariff sheets shall become effective upon five days' notice to this Commission and to the public after filing as hereinabove provided.

5. Application No. 45340 is denied.

The authorization herein granted will expire if not exercised within one year of the effective date of this order.

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

Dated at San Francisco, California, this 1<sup>st</sup> day of October, 1963.

William W. Bennett  
President  
Robert E. Hitt  
Wesley W. Page  
George T. Trover  
Frederick B. Hallock  
Commissioners

APPENDIX "A"

APPEARANCES

John Ormasa and Robert Salter, for Southern California Gas Company, applicant, and protestant to Application No. 45340.  
Robert V. Wills and Henry F. Lippitt, 2nd, for Desert Gas Co., Inc., applicant, and protestant to Application No. 45099.

G. C. Delvaille and John R. Lutz, for California Electric Power Company; Charles R. Allen, for Morongo Valley Chamber of Commerce; Harold A. Bahr, for Callahan's, Inc.; Richard Battle, for Community Betterment Committee, Yucca Valley Post #469, The American Legion; Christine Box, for Wilson's Motel; Oscar S. Bailey, for Sky View Homes; Lloyd L. Brunsteter, for Wind Mill Point Trailer Court; Ken Carter, for Twentynine Palms Chamber of Commerce; William H. Cole, for Yucca Valley Chamber of Commerce; Robert L. DeWitt, for Twentynine Palms Community Council; Norman Essig, for Sky Harbor Ranchos & Estates; Earl H. Farnsworth, for Twentynine Palms Motel & Inn Association; Thelma Garrigan, for Cafe & Bar Association; William B. Hatch, Jr., for Hatch and Buck; C. C. Healey, for Healey Bros. Properties and Associated Chambers of Commerce; L. B. Jarman, for Board of Realtors; Hugh F. Leonard, for Yucca Valley Hi Desert Kiwanis Club; T. L. Martin, for American Legion Post #334; Glenn Nufer, for Property Owners Association; Carl Piazza, for Realtors Board of Yucca Valley; Walter E. Price, for Yucca Valley Trailer Court; Mildred R. Ronde, for Twentynine Palms Dunes, Inc.; Ernest A. Sall, for Yucca Valley Multiple Listing Service; Mary Skipwith, for Palm Wells Chamber of Commerce; Mrs. Kay Vilott, for Yucca Valley Business & Professional Club and Yucca Valley Country Club Estates; Donn B. Wallace, for Morongo Unified School District; Charles S. Watkins, for Yucca Valley Board of Realtors; and Fred F. Ault, Ralph E. Benn, R. W. Black, James V. Bohannon, Harold H. Brown, William H. Claus, III, Claude A. Conlin, Jr., Kathleen Ford, Elwyn Glass, Dr. Grace Munson, Hugh K. Nickerson, James D. Quillinan, Bob Roberts, Harlan M. Sheldon, Mrs. Beulah B. Smith, David E. Malquist, Mrs. Gertrude M. Wesner, and A. B. Woodward, in propria personae; interested parties.

Cyril M. Saroyan and Harold L. Pearlstein, for the Commission's staff.

End of Appendix "A"



APPENDIX "B"

DESCRIPTION OF HIGH DESERT AREA 121  
SAN BERNARDINO AND RIVERSIDE COUNTIES

The area in San Bernardino and Riverside Counties lying within the following described boundary: Beginning at the southwest corner of Section 6, T-3S, R-4E (S.B.B.&M.); thence northerly along the west line of Range 4 East to the northwest corner of Section 6, T-1S, R-4E; thence easterly along the north line of Township 1 South to the southeast corner of Section 36, T-1N, R-4E; thence northerly along the west line of Range 5 East to the northwest corner of Section 6, T-1N, R-5E; thence easterly along the north line of Township 1 North to the southeast corner of Section 36, T-2N, R-7E; thence northerly along the east line of Range 7 East to the northwest corner of Section 19, T-2N, R-8E; thence easterly along the north lines of Sections 19 through 24 in Township 2 North, Ranges 8 East, 9 East and 10 East to the northeast corner of Section 24, T-2N, R-10E; thence southerly along the east line of Range 10 East to the southeast corner of Section 36, T-1N, R-10E; thence westerly along the south line of Township 1 North to the northeast corner of Section 2, T-1S, R-9E; thence southerly along the east lines of Sections 2 and 11, T-1S, R-9E to the southeast corner of said Section 11; thence westerly along the south lines of Sections 11, 10 and 9, T-1S, R-9E to the southwest corner of said Section 9; thence northerly along the west lines of Sections 9 and 4, T-1S, R-9E to the northwest corner of said Section 4; thence westerly along the south line of Township 1 North to the southeast corner of Section 32, T-1N, R-7E; thence southerly along the east lines of Sections 5, 8 and 17, T-1S, R-7E to the southeast corner of said Section 17; thence westerly along the south lines of Sections 17 and 18, T-1S, R-7E and Sections 13 through 18 in Township 1 South, Ranges 6 and 5 East, respectively, to the northeast corner of Section 24, T-1S, R-4E; thence southerly along the east line of said Section 24 to its south line; thence westerly along the south line of said Section 24 to its southwest corner; thence southerly along the east lines of Sections 26 and 35, T-1S, R-4E, Sections 2, 11, 14, 23, 26 and 35, T-2S, R-4E, and Section 2, T-3S, R-4E to the southeast corner of said Section 2, T-3S, R-4E; thence westerly along the south lines of Sections 2 through 6, T-3S, R-4E; to the point of beginning of this description.

End of Appendix "B"

APPENDIX "C"

Temporary Supplement to

Rule No. 20

GAS MAIN EXTENSIONS

A. Main Extension Allowances - High Desert Area 121

1. The free footage allowance for extension of gas distribution mains to construct the initial distribution system in High Desert Area 121 will be 120 feet for each prospective customer.
2. On completion of the initial extension and for a period of three years thereafter, the free footage allowance for each new customer will be 120 feet of main or the allowance provided by Rule No. 20, whichever is greater.
3. In all other respects, the provision of Rule No. 20, Gas Main Extensions, will be applicable.

B. Effective Period

This temporary supplement will not be effective after December 31, 1966.

End of Appendix "C"