

Decision No. 84784**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHWEST GAS
CORPORATION For Commission to
Exercise Its Jurisdiction in
San Bernardino County, California.

Application No. 55411
(Filed December 20, 1974)

Investigation on the Commission's
own motion into the operations,
rates, practices and conditions of
service of SOUTHWEST GAS CORPORATION.

Case No. 9863
(Filed January 21, 1975)

Darrell Lincoln Clark, Attorney at Law, for Southwest
Gas Corporation, applicant.

Kenneth E. Hagen, Attorney at Law, for Lucerne Valley
Hydroponics Cooperative, protestant.

Janice E. Kerr, Attorney at Law, for the Commission staff.

O P I N I O N

The principal controversy involved in both Application No. 55411 and Case No. 9863 is whether Southwest Gas Corporation (Southwest), a gas corporation, or Lucerne Valley Hydroponics Cooperative (Lucerne), an agricultural cooperative and customer of Southwest, must pay for the reinforcement of Southwest's Lucerne Valley distribution gas main (if, indeed, such reinforcement is necessary) to accommodate the heating of an increasing number of greenhouses being added on land owned by Lucerne situated in the Lucerne Valley east of Victorville. The matters were heard on a consolidated record before Examiner Pilling at San Bernardino on February 3 and 4, 1975 and upon the filing of briefs the cases were submitted.

The members of Lucerne are in the business of growing vegetables rooted in an inert material awash with nutrient mineral solutions rather than in the soil. The greenhouses in which the vegetables are grown are individually owned by the members and are heated by gas heaters with gas furnished by Southwest to Lucerne through a master meter located on the edge of Lucerne's property. Lucerne furnishes the gas to the greenhouses from the meter via Lucerne's private main distribution system. Tomatoes are the present crop. Members of Lucerne have invested on the average of \$20,000 per greenhouse and the total investment in greenhouses, as the project now stands, is \$480,000. Lucerne is the successor in operations to one Produponics Industries (Produponics) which received permanent gas service at the meter for distribution to greenhouses for 20 months from September, 1971 until April of 1973 at which time the gas was shut off for failure of Produponics to pay a still unpaid gas bill. Shortly after the gas was shut off owners representing 16 of the greenhouses formed Lucerne as an agricultural cooperative and caused it to purchase the land on which the greenhouses are located and to request the reinstitution of gas service through the main meter. Prior to filing formal application for gas service Lucerne, through Mr. David J. Jay (Jay), the General Manager of Lucerne, had preliminary telephone discussions with Mr. John Mayo (Mayo), Southwest's Southern California Division Manager, about the proposed service. Mayo testified that Jay indicated in those conversations that Lucerne intended to put only 12 greenhouses on the line initially and 2 more at a future date. Later, on August 13, 1973 Mayo wrote Jay advising him that Southwest estimated that a major reinforcement of the distribution mains would be required and that Lucerne would have to "participate in the cost". On September 24, 1973, Mayo sent a letter to Jay at Long Beach which stated among other things that "a maximum of 12 houses may be operated at this time. Should more than 12 houses be connected without prior approval from the utility, all service may be

discontinued." This letter also stated that Lucerne would be required to advance approximately \$22,000 to pay for the reinforcement main necessary to serve any houses beyond the initial 12 greenhouses. The day after the letter was sent, Jay filed a written application on behalf of Lucerne for gas service at Victorville, paid a \$1,200 deposit to establish its credit, and Lucerne became Southwest's customer. During the remainder of 1973 Lucerne put the 12 greenhouses on line. While Mayo had already made up his mind to classify Lucerne as a temporary service customer because of his experience with the Produponics account and another hydroponic operation in the Lucerne Valley that had gone defunct, neither he nor anyone at Southwest told this to Lucerne. During the winter heating season of 1973-1974 Southwest did not experience low pressure problems on its distribution line serving Lucerne.

Sometime before September 1974, Lucerne added an additional 7 greenhouses bringing the total greenhouses on line to 19. The evidence is in dispute whether or not Mayo gave his verbal assent for the 7 additional greenhouses. However, in September 1974, after he found that 7 additional greenhouses were already on line Mayo agreed to let Lucerne keep all 19 greenhouses on line but verbally warned Jay that reinforcement would still have to be done prior to the peak demand that would be caused by cold weather commencing in November 1974. On November 19, 1974 Southwest sent a letter to Lucerne demanding an additional credit deposit to cover the additional gas used by the 7 greenhouses. Lucerne made the deposit.

Jay, by letter to Mayo dated November 25, 1974 wrote "We are prepared to pay for the additional gas line with a \$5,000 down payment and the balance at \$2,000 per month. I would be personally willing to guarantee the payments." Accompanying the letter was Lucerne's profit and loss statement for the fiscal year ending March 31, 1974 and a "Statement of Condition" (akin to a balance sheet)

of Lucerne as of the same date. Lucerne's profit and loss statement showed a \$37,000 loss for the year ended March 31, 1974. Jay explained this loss by stating that the statement is the profit and loss statement as related to Lucerne's revolving fund and was prepared on a cash basis; that the true profit picture of the Lucerne operation is reflected in the Statement of Condition which is prepared on an accrual basis and shows a profit for six months of \$19,000. Jay testified that accounting procedures for agricultural cooperatives insofar as financial statements are concerned differ somewhat from those of an ordinary business and that Jay attempted to point this out to Mayo when Jay submitted Lucerne's financial statement to Mayo for approval to pay whatever advances were necessary in installments. Southwest contends that because Lucerne's Statement of Condition shows cash in bank of \$892 and deposits of only \$2,895 that Lucerne is in no financial condition to make the down payment let alone keep up the monthly installments. Jay testified he intended Lucerne to pay the installment payments from cash flow from produce which is very high during the produce marketing season. On November 27, 1974 Mayo wrote Jay declining to accept Lucerne's offer to make installment payments and advised Jay that unless a lump sum payment of the total installation cost was made by December 6, 1974 Lucerne would have to disconnect all but 12 greenhouses and that if Lucerne failed to make the disconnections Southwest would discontinue service to the entire project.

Also on November 27, 1974 Jay inquired of Mayo as to how much credit Lucerne would be allowed under Southwest's tariff Rule No. 15 against the cost of installation because of Lucerne's connected load. Mayo, for the first time, informed Jay that Lucerne's gas service was not permanent service but was temporary service and as a temporary service customer Lucerne (1) would get no connected load credit, and (2) would have to stand the entire cost of reinforcing

the main. Jay testified that he had always assumed that Lucerne was a permanent service customer. As authority for Southwest's decision in classifying Lucerne as a temporary service customer and for requiring Lucerne to pay the entire cost of installation of the reinforcement main Southwest points to its tariff Rules Nos. 1 and 13. (Pertinent portions of Southwest's tariff rules referred to herein, unless reproduced in the body of this decision, are set out in Appendix A.) Mayo testified that Lucerne's operations met the description of operations described in the definition of temporary service in Rule No. 1, that is, Lucerne's operations were speculative in character and their permanency had not been established. Mayo testified that he classified Lucerne as a temporary service customer because:

"Number one, our experience with Hydroponics farming operations in the Lucerne Valley area had been that the failure rate was 100 percent prior to Lucerne Valley Hydroponics Cooperative's application for service. Given the known financial problems involved in those companies I reached the conclusion that the business as practiced at those two particular places was of a speculative nature and that Lucerne Valley Hydroponics Cooperative was acquiring the assets, if we might call them that, of one of those operators and proceeding with the business upon the same general basis. It was my feeling that if the first two failed, that there could very well be some significant economic problems with that type of an enterprise in that area under those circumstances, and I felt that it was speculative in nature. [Transcript of Record, page 61.]

* * *

"...for the 12 month period ending March of 1974... they had a \$37,000 loss. [Transcript of Record, page 70.]

* * *

"Q. Now, the other definition of temporary service in terms of '...or the permanency of which has not been established....' What is your explanation of what those words mean?

"A. The permanency of which has not been established? I think that applies very nicely to the hydroponics farming operation with which we had experienced in Lucerne because they have been in and out of business." (Transcript of Record, page 72.)

Between October and December of 1974 Lucerne added 5 more greenhouses bringing the total number of greenhouses on line to 24. Jay stated that there is room for 60 greenhouses on the property and that additional greenhouses will be added in the future. He testified that there are viable hydroponic operations in Hesperia, Yucca, Calley, Lake View, Elsinore, and Landers.

The manager of engineering for Southwest testified that the distribution system which serves Southwest was designed with a feed-in pressure from the regulator station of 43 PSIG and that the minimum pressure at any point on the distribution system to insure adequate delivery to customers on the system was 12 PSIG on the upstream side of the customer's service regulator and 5 PSIG on the downstream side of the service regulator. If the pressure drops below 5 PSIG on the customer's side of the regulator the flame in the combustion device as well as the pilot light could go out, and unless there was a safety device to shut off the gas when this happens unignited raw gas would escape from the appliance. He testified that some of the older customers on the system do not have safety devices on their appliances. He testified that he had a study conducted on the morning of January 3, 1975 and determined that Lucerne was using approximately 5,500 cubic feet of gas while the other customers were collectively using 4,700 cubic feet of gas. He testified that from studies he had made he concluded that the use by Lucerne of 5,500

cubic feet per hour of gas would reduce the pressure in the distribution system to the minimum 12 PSIG in the situation where at the same time the other customers were drawing their combined maximum flow rate of 4,700 cubic feet per hour. He testified that he had a chart affixed to between Lucerne's regulator and meter which showed that on January 30, 1975 between 6:00 a.m. and 7:00 a.m. Lucerne received delivery of 7,476 cubic feet of gas during that one hour period. The chart also shows that between 6:00 a.m. on January 29, 1975 and the same time on January 30, 1975 Lucerne received 90,086 cubic feet of gas and while for the most part during that time the pressure stayed at 5 PSIG between regulator and meter it dropped below 5 PSIG during heavy deliveries. This period of the day is the time of greatest usage by other customers during the winter months. The witness testified that if Lucerne stayed with just 24 greenhouses a two-inch reinforcing main would be all that was needed but that a 4-inch reinforcing main would be necessary in the event more than 24 greenhouses would be put on line. The witness stated that the route of the reinforcing main was chosen because it followed a dedicated roadway into which Southwest had entry. The witness also testified that Southwest could not simply raise the pressure at the regulator station above the normal operating pressure of 43 PSIG in order to avoid pressure problems and leave it that way due to the fact that the Commission's General Order 112-C limits the amount of pressure to that particular system to 43 PSIG. In the witness' opinion there is a sufficient volume of gas available at the main regulator station to take care of the increased volume required by the reinforcement main. Mayo testified that on the morning of January 28, 1975, the distribution system pressure reached a low point of 9 PSIG at Lucerne and that, as a result, Southwest had to send personnel to the regulator station to increase the inlet pressure above 43 PSIG and to send several persons to various points on the system to monitor the pressure to assure that the system did not become over-pressured at any point.

Lucerne takes issue with the extent of reinforcement which Southwest claims to be necessary. The present distribution mains are 2-inch steel and plastic pipe. Southwest intends to reinforce the main by putting in a 4-inch line from the regulator station through an area not presently served by Southwest for a distance of 6,700 feet to connect with the main close to Lucerne's meter. Lucerne on brief claims that a 2-inch main from the regulator station following the present route of the main to connect up 4,587 feet away from the regulator station will suffice and cost but \$5,964 in accordance with Southwest's cost figures. Lucerne contends Southwest wants Lucerne to pay for a major expansion in capacity greatly beyond the needs of Lucerne or the present capacity of the utility. Jay, an engineer in thermodynamics, fluid mechanics, mass transfer, and heat transfer, testified that he did not believe the reinforcement was necessary but admitted that it was good business practice because the gas plant will soon be operating on its ragged edge and was getting close to its lag capabilities. However, Lucerne on brief requests that we order Southwest to upgrade its system at Southwest's expense by October 31, 1975. Lucerne also requests that we award it costs and attorney's fees incurred in this matter.

Southwest contends that Lucerne's business has speculative characteristics concerning its financial integrity and for this reason Southwest should not be required to invest funds in facilities that may prove to be a burden upon its other ratepayers and so Lucerne should be required to pay the cost of the reinforcement as a condition precedent to receiving gas service to greenhouses in excess of nineteen. Southwest also contends that under its tariff Rules Nos. 3C and 11C it may refuse service to Lucerne since those rules are designed to protect its customers from failures in service due to losses in pressure. Southwest under its Rule No. 19 requests that the Commission approve its proposed refusal to render service to Lucerne on greenhouses in excess of those which in its opinion may jeopardize firm service to its other domestic customers.

Discussion

Southwest's Rule No. 4 requires that a written contract be entered into with a temporary service customer as a condition precedent to that customer receiving service. No such contract was entered into between Southwest and Lucerne prior to the commencement of service to Lucerne and no follow-up made by Southwest to secure such a contract. While certain persons at Southwest may have had in mind that Lucerne should be classified as a temporary service customer the official decision and act of Southwest was to treat Lucerne as a permanent service customer and not require some sort of a written agreement with Lucerne prior to initiating service despite the fact that Southwest knew at the time of the distinct possibility that Lucerne would put a total of 14 greenhouses on line at some future time and that the main had to be reinforced. Southwest's letter to Lucerne of September 24, 1973 cannot be said to satisfy the written contract condition. The letter was mailed to Long Beach one day before Jay appeared at Southwest's office at Victorville to file the application for Lucerne and Lucerne became a customer. The record does not show that Jay even knew about the letter at the time he made application, nor that the letter was called to his attention, nor that he acquiesced in the conditions set out in the letter. Furthermore, the term "written contract" applies to a single document signed by both parties or more than one signed document clearly evidencing a meeting of the minds. Else controversies such as we have here would abound. From Southwest's treatment of Lucerne up to and at the moment Lucerne became a customer of Southwest's we can only conclude that the service to Lucerne was permanent service. While Southwest's tariffs contain provisions for the reclassification of temporary service to permanent service no tariff provisions authorize the reverse reclassification.

Reinforcement of the distribution main is necessary at this time due almost wholly to Lucerne's increased use of gas. The question arises as to whether or not Southwest's tariff Rule No. 15-- Gas Main Extensions is applicable to the proposed reinforcement project. Both parties mistakenly believe that Rule No. 15 is applicable though they differ on the amount of the connected load credit to be allowed. The preamble to Rule No. 15 reads: "Extensions of gas distribution mains necessary to furnish permanent gas service to applicants will be made by the Company in accordance with the following provisions...". The word "applicant" appearing in the preamble is defined in Rule No. 1 as "A person or agency requesting the Company to supply gas service" while a "customer" is defined in the same rule as "The person in whose name service is furnished...". Clearly, Lucerne is not an applicant but a customer. Rule No. 15 has no application to customers therefore it does not apply to the proposed reinforcement project. Southwest has no tariff provisions applicable to the reinforcement of its distribution mains. Indeed, once Southwest has instituted service it is Southwest's duty to provide and maintain adequate service to its customers at its own expense and the reinforcement of its distribution mains at its own expense to take care of increased usage of gas is part of that duty.

Southwest contends that its Rule No. 19 permits it to refuse service to Lucerne because of the excessive volume of gas used by Lucerne. That rule opens with the words "In order that this utility may be enabled to make the most effective and economic use of the natural gas available and to be available..." A Southwest witness testified that there is sufficient gas available at the main regulator station to service the reinforcement. Rule No. 19 runs counter to the duty of a utility under Section 451 of the Public Utilities Code which states that "Every public utility shall furnish and maintain such adequate, efficient, just and reasonable service..." so that the rule is not operative where a sufficient volume of gas is available as in this case.

Southwest claims that under Rule No. 11-C--Service Detrimental to Other Customers it may restrict service to Lucerne during maximum peak periods of use if, without written notice to Southwest, Lucerne adds greenhouses which result in overburdening the plant during such periods. One of the purposes of Rule No. 11-C is to give Southwest the authorization to protect its other customers in the event one customer, such as Lucerne, fails to keep Southwest posted when adding equipment which uses large volumes of gas.

Findings and Conclusions

1. Southwest is a gas corporation.
2. Southwest's tariff permits it to exercise judgement based on certain criteria in classifying the service requested by an applicant as either temporary service or permanent service.
3. Under Southwest tariff Rule No. 13 applicants for service classified by Southwest as temporary service must pay, in advance or otherwise as required by Southwest, the estimated cost installed plus the estimated cost of removal, less the estimated salvage of the facilities necessary for furnishing service.
4. As a condition precedent to receiving service applicants for temporary service must enter into a written contract with Southwest in accordance with its tariff Rule No. 4.
5. Lucerne filed an application for service with Southwest, made a deposit of money with Southwest to establish Lucerne's credit, and Southwest initiated gas service to Lucerne without Southwest either entering into a written contract with Lucerne and without making any arrangements for or requiring Lucerne to pay any monies for the reinforcement of Southwest's distribution main which would serve Lucerne.
6. Southwest was aware at the time Lucerne made application to it for service of the likelihood that Lucerne would increase the number of greenhouses initially to be put on line to the extent that the distribution main would be overburdened during periods of peak maximum usage.

7. The action of Southwest as set out in Finding 5 coupled with its knowledge set out in Finding 6 was the overt result of the exercise of Southwest's judgement to classify the service requested by Lucerne as permanent service.

8. Lucerne is a permanent service customer of Southwest's at Lucerne's present meter.

9. Southwest's tariff Rule No. 15-A and B applies only in the case of an application for permanent service and has no application in the case of reinforcing distribution mains to permanent service customers.

10. Southwest has no tariff provision which authorizes it to reclassify permanent service to temporary service.

11. Southwest may not refuse service to Lucerne for Lucerne's failure to meet the conditions set forth in Southwest's Rule No. 13.

12. Lucerne violated the provisions of Southwest's Rule No. 3-C in failing to give written notice to Southwest when Lucerne added greenhouses in excess of 12 in number.

13. Lucerne should be ordered to comply with Southwest's tariff Rule No. 3-C in the matter of giving appropriate written notice to Southwest when increasing the number of greenhouses which it puts on line.

14. The Commission will not entertain a request under Southwest's Rule No. 19 to authorize discontinuance of gas service where mere plant capacity is at issue, as it is here in this case, and is unconnected with matters of gas conservation or other special circumstances.

15. As a public utility, Southwest has the duty under Section 451 of the Public Utilities Code to furnish and maintain adequate service to its customers to the extent, in this case, of upgrading its plant at its own cost by timely reinforcing its distribution main to satisfy the reasonable request of Lucerne for increased service.

16. The record is unclear as to how many greenhouses Lucerne anticipates it will add or when it will add them, therefore, the Commission should not prescribe either the extent of or the manner by which Southwest should reinforce its Lucerne Valley distribution main.

17. Reinforcement of Southwest's Lucerne Valley distribution main is presently necessary before November, 1975 if Lucerne will be operating 19 or more greenhouses during the winter months of 1975-76 and Southwest should be ordered to upgrade that main at its own cost as in its considered judgement is necessary before that time.

18. Lucerne's request for costs and attorney fees should be denied.

19. Lucerne's request for oral argument before the Commission should be denied.

O R D E R

IT IS ORDERED that:

1. Southwest Gas Corporation may not and shall not discontinue gas service to Lucerne Valley Hydroponics Cooperative at the latter's present meter for the failure of the latter to meet the conditions set forth in the former's tariff Rule No. 13-A.


2. Southwest Gas Corporation shall, before October 31, 1975, as in its judgement is necessary, reinforce its Lucerne Valley distribution main at its own cost so as to be able to render adequate, efficient, just, and reasonable service to customers on that main including service to Lucerne Valley Hydroponics Cooperative.

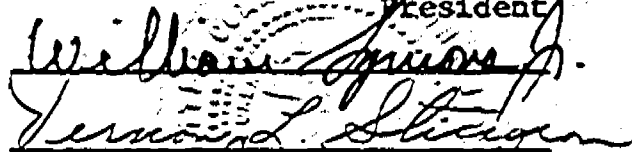
3. Lucerne Valley Hydroponics Cooperative shall comply with Southwest Gas Corporation tariff Rule No. 3-C and give written notice to the latter in conformity thereof when increasing the number of greenhouses which it puts on line.

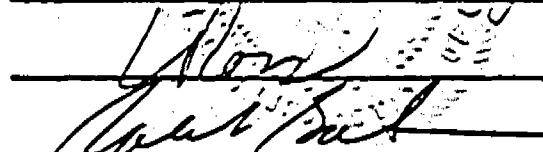
4. Lucerne's request for costs and attorney's fees and oral argument before the Commission are denied.

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

Dated at San Francisco, California, this 12th
day of AUGUST, 1975.



President


Vernon L. Stieger


Commissioners

APPENDIX A
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"RULE NO. 1

"DEFINITIONS

* * *

"Permanent Service: Service which, in the opinion of the Company, is of a permanent and established character. This may be continuous, intermittent, or seasonal in nature.

* * *

"Temporary Service: Service for enterprises or activities which are temporary in character or where it is known in advance that service will be of limited duration. Service which, in the opinion of the Company, is for operations of a speculative character or the permanency of which has not been established."

"RULE NO. 3

"APPLICATION FOR SERVICE

* * *

"C. CHANGE IN CUSTOMERS' EQUIPMENT

"Customers making any material change in the size, character or extent of the utilizing equipment or operations for which the Company is supplying gas service shall immediately give the Company written notice of the extent and nature of any material change.

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"RULE NO. 4

"CONTRACTS

"A. WRITTEN CONTRACTS

"Contracts will not be required as a condition precedent to service except:

* * *

"2. In the case of gas main extensions or temporary service..."

"RULE NO. 11

"DISCONTINUANCE AND RESTORATION OF SERVICE

* * *

"C. SERVICE DETRIMENTAL TO OTHER CUSTOMERS

"The Company will not establish service to equipment the operation of which will be detrimental to the service of its other customers, and will discontinue gas service to any customer who shall continue to operate such equipment after having been directed by the Company to cease such operation.

* * *

"E. NONCOMPLIANCE WITH THE COMPANY'S RULES

"Unless otherwise specifically provided, the Company shall have the right to discontinue gas service to a customer for noncompliance with any of these Rules if, after at least five days' notice thereof, the customer shall not have complied therewith."

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"RULE NO. 13

"TEMPORARY SERVICE

"A. ESTABLISHMENT OF TEMPORARY SERVICE

"The Company shall, if no undue hardship to its existing customers will result therefrom, furnish temporary service under the following conditions:

- "1. The applicant shall pay, in advance or otherwise as required by the Company, the estimated cost installed plus the estimated cost of removal, less the estimated salvage of the facilities necessary for furnishing service.
- "2. The applicant shall establish credit as required by Rule No. 6, except that the amount of deposit prescribed in Rule No. 7 shall not exceed the estimated bill for the duration of service."

"RULE NO. 19

"LIMITATION UPON NATURAL GAS SERVICE

"A. REASONS FOR REFUSAL OR LIMITATION OF SERVICE

"In order that this utility may be enabled to make the most effective and economic use of the natural gas available and to be available, each of the gas rate schedules and contracts of, and the rules governing the sale of natural gas by this utility on file with the Public Utilities Commission of the State of California shall be deemed amended and is hereby declared amended or reformed to the extent that any such schedule, contract or rule is or may be inconsistent, or in conflict, with the following conditions and regulations:

- "1. Service of gas under any firm schedule in any equipment (usage to be cumulative in such equipment and all equipment added thereafter in the same premises) estimated by the Company to use in excess of 25,000 cubic feet of gas per day of twenty-four hours, not served at the effective date hereof with gas under a firm schedule, may be refused by the Company with the approval of the Public Utilities Commission in those cases where the customer could, in the judgment of the Company, readily use a substitute fuel without undue hardship, or in those cases where the amount of such usage during periods of firm peak demand might, in the judgment of the Company, be such as to jeopardize firm service to domestic customers."