

ORIGINAL

Decision No. 86364

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CONTADINA FOODS, INC., a corporation,
Complainant,

vs.

SOUTHERN CALIFORNIA GAS COMPANY,
a corporation,

Defendant.

Case No. 9964
(Filed September 5, 1975;
amended October 9, 1975)

O P I N I O N

Contadina Foods, Inc. (Contadina) seeks an order from the Commission ordering Southern California Gas Company (SoCal) to "cease discriminating against complainant and to supply natural gas" on an interruptible basis for use as boiler fuel to operate a new tomato processing plant located at Hanford, California, and to require SoCal to install any facilities necessary in order to supply natural gas.

Contadina alleged that:

1. SoCal presented to Contadina for signature an agreement dated May 2, 1975 for gas distribution facilities and for the supply of natural gas;
2. SoCal on August 26, 1975 refused the request of Contadina to supply it natural gas;
3. Refusal to supply Contadina constitutes discrimination when supplied to competitors and that such discrimination prejudices and causes irreparable damage to Contadina;
4. Refusal to supply Contadina discriminates in favor of competitors and is a violation of SoCal's filed tariffs and responsibility as a public utility;

5. SoCal's refusal is based on Commission Resolution No. G-1761 dated June 17, 1975 and Decision No. 83819 dated December 10, 1974;
6. As a result of the discrimination Contadina must purchase a more expensive alternate fuel;
7. The equal protection clause of the U.S. Constitution extends to all actions of the State and that Decision No. 83819 and Resolution No. G-1761 are a denial of equal protection of the laws; and
8. The refusal will cause Contadina economic harm in excess of \$36,000,000 over the life of its facility.

In answer to the complaint SoCal admits that it is presently supplying natural gas to some of Contadina's competitors, that gas lines could be extended, that Contadina agreed to pay for the extension, that SoCal submitted a contract to Contadina for execution, and that Contadina's request for service was refused. SoCal also states that service to Contadina was refused only after the Commission rejected Advice Letter No. 919 dated May 20, 1975.

Hearing was held at Los Angeles on May 11, 1976 before Examiner Banks at which time the matter was submitted. At the hearing it was stipulated that:

- "1. There is no issue of the charges to be paid by Complainant for gas line extension by Defendant from its existing facilities to the plant of the Complainant at Hanford, California.
- "2. There is no issue that Defendant has the physical facilities to furnish natural gas to the plant of Complainant at Hanford, California.
- "3. The sole reason for refusal by Defendant to furnish natural gas to the plant of Complainant at Hanford, California, was the orders of the Public Utilities Commission of California affecting the furnishing of such natural gas to a new industrial customer.

- "4. The Defendant is now furnishing natural gas to canners in California, who manufacture, process, distribute and sell tomato products similar to those to be manufactured, processed, distributed and sold by Complainant at its tomato processing plant at Hanford, California."

Contadina presented two witnesses. Mr. James W. Webster, director of engineering for Carnation Co., Contadina's parent, testified that in August 1974, prior to construction of the Hanford plant, SoCal had stated it was prepared to supply Contadina natural gas, that the plant would not have been built without such assurance of a supply of gas, that on June 26, 1975 SoCal notified Contadina that the Commission had rejected defendant's request to serve Contadina on an interruptible schedule, that the requirement to burn an alternate fuel would impose operational problems not present if natural gas were burned, that alternate fuels are more costly thereby placing Contadina at a competitive disadvantage, and that the Commission's Decision No. 83819 unreasonably discriminated against Contadina.

On cross-examination Mr. Webster admitted he was aware of Commission Resolution No. G-1761 dated June 17, 1975 which denied SoCal's application to furnish Contadina natural gas on an interruptible schedule, that he was aware of the shortage of natural gas, and that SoCal is subject to the regulations and decisions of the Commission. He also testified that the plant was designed to burn fuel oil as an alternate fuel and that when SoCal refused Contadina natural gas service two additional 75,000-gallon fuel oil storage tanks were installed.

Mr. Raymond C. Warren, vice president of Contadina, testified that with the addition of the Hanford plant Contadina will have five tomato processing plants in California, that plants now in operation are receiving gas on an interruptible service schedule, that to date they have never been refused gas for boiler fuel use, and that the inability to use natural gas as boiler fuel will place Contadina at a competitive disadvantage.

Decision No. 83819 dated December 10, 1974 in Case No. 9642 requires Commission approval before a gas utility can (1) provide service to any new nonresidential customer with a demand exceeding 200 Mcf per day and (2) install additional facilities to provide additional service to a nonresidential customer wherein the new level of demand is in excess of 200 Mcf per day. Contadina's request for service far exceeds this amount. Resolution No. G-1761 denied Contadina's request. It reiterated the critical gas supply situation facing the State and concluded that to grant the request would further reduce the gas supply thereby accelerating curtailment of all categories of users. In reaching this conclusion it was pointed out that Contadina proposed to use natural gas for boiler fuel use, that boiler fuel requirements should be met with alternate fuels, and that the then proposed end-use priorities would not permit natural gas for boiler fuel use after 1975.

On December 2, 1975 in Decision No. 85189 we established an end-use priority system for the distribution of natural gas within the State of California. That decision was issued after 21 days of hearings in Los Angeles, San Francisco, and San Diego. It reviewed extensively prior decisions^{1/} dealing with the dismal natural gas supply picture facing the State, the Commission's regulatory responsibility, and jurisdiction and pointed out that the Legislature had added Sections 2771-2776 to the Public Utilities Code which require the Commission to establish a system of priorities among categories of customers and uses in descending order starting with those which "provide the most important public benefits and serve the greatest public need."

^{1/} See also D.81931 dated September 25, 1973; D.82139 dated November 13, 1973; D.82881 dated May 15, 1974; D.83612 dated October 16, 1974; and D.83819 dated December 10, 1974.

The State's critical natural gas supply picture requires the Commission to take affirmative action to protect this dwindling asset. In the decision establishing end-use priorities it was determined that natural gas for boiler fuel was an inferior use requiring that it be placed in Priority P-4. That decision also eliminated the interruptible class. In addition, the record in Case No. 9642 indicates that by 1977 Priority P-4 customers will be curtailed 100 percent on the SoCal system and any relief available would at best be temporary unless there is a complete reversal in the supply picture. To require SoCal to supply gas to Contadina would also accelerate SoCal's already critical supply problem requiring earlier curtailment of high priorities than is presently predicted.

Contadina's argument that the order requiring SoCal to obtain Commission approval before making new service connections is unlawful and a taking of property without due process of law is not well founded. In addition to the legislative mandate that we establish a list of priorities, we stated in Decision No. 85189:

"That this Commission has the power to alter existing contracts and utility company tariffs by which service is supplied to their customers in times of gas shortages, so as to allocate gas for the greatest public benefit, is well established. (Sutter Butte Canal Co. v Railroad Comm. (1927) 202 Cal 179, affirmed (1929) 73 L ed 637; Market Street Railway Co. v PG&E (1925) 6 F 2d 533; Traber v Railroad Comm. (1930) 183 Cal 304.)"

The relief requested must be denied.

Findings

1. Contadina processes tomatoes at its Hanford, California, plant located in SoCal's service territory.
2. Contadina proposes to use natural gas as a boiler fuel to generate steam for processing tomatoes.

3. Contadina applied to SoCal for natural gas service on an interruptible basis.

4. SoCal and Contadina executed a contract for the extension of a gas line to provide natural gas service on an interruptible basis.

5. On May 20, 1975 SoCal filed Advice Letter No. 919 with the Commission requesting permission to extend a gas line to Contadina's new Hanford plant pursuant to the parties' agreement.

6. The Commission by Resolution No. G-1761 dated June 17, 1975 denied the SoCal request to provide Contadina natural gas service at its Hanford plant.

7. Denial of Contadina's request for interruptible gas service is not discriminatory. There is a serious shortage of natural gas.

8. The Commission's order requiring SoCal to obtain approval prior to making new connections is not unlawful nor a taking of property without due process of law.

9. For SoCal to serve Contadina natural gas for boiler fuel use would not provide the most important public benefits and serve the greatest public need.

Conclusion

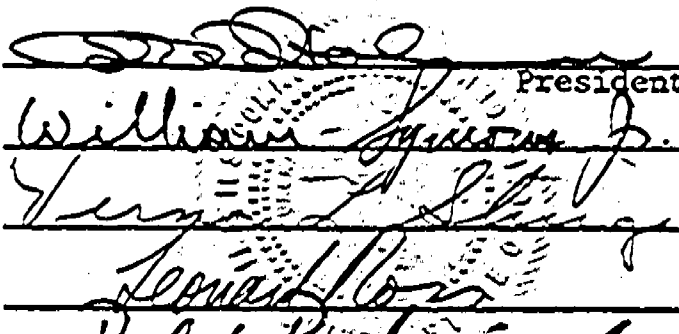
The relief requested should be denied.

O R D E R

IT IS ORDERED that the relief requested is denied.

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

Dated at San Francisco, California, this 14th
day of SEPTEMBER, 1976.


William J. Quinn President
Theresa L. Stinson
Leonard H. ...
Robert B. ... Commissioners