

Decision 88 12 090 DEC 19 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SOUTHWEST GAS CORPORATION for a)
Certificate of Public Convenience)
and Necessity under Article 1 of)
Chapter 5 of the California Public)
Utilities Code to regularize and)
extend its service area to provide)
natural gas service and to exercise)
all permits, easements, and)
franchises which may be used or)
useful in connection therewith in)
the vicinities of Baldwin Lake,)
Baldy Mesa, Bell Mountain, Erwin)
Lake, Lake Williams, Oak Hills,)
Phelan, and Woodlands, San)
Bernardino County, California and in)
certain other portions of the)
unincorporated area of San)
Bernardino County, California)
located contiguous to Southwest Gas)
Corporation's existing certificated)
service area.)

ORIGINAL

Application 86-10-042
(Filed October 16, 1986;
amended March 2, 1987)

Lawrence V. Robertson, Jr., Attorney at
Law, for Southwest Gas Corporation,
applicant.

Robert B. McLennan, Attorney at Law, for
Pacific Gas and Electric Company,
protestant.

Peter N. Osborn, Attorney at Law, and
George Hannah, for Southern California
Gas Company, interested party.

Carol L. Matchett, Attorney at Law, and
Jean Jarioura, for the Division of
Ratepayer Advocates.

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O P I N I O N

Comments on the Proposed Decision
of the Administrative Law Judge

Public Utilities (PU) Code § 311(d), as implemented by Commission Rules of Practice and Procedure 77.1 through 77.4, provide for the filing and distribution to all parties of the Administrative Law Judge's (ALJ) proposed decision, with opportunity for the parties to submit comment and replies to the comment.

ALJ Weiss' proposed decision in this proceeding was served on the parties. Pacific Gas and Electric Company (PG&E) submitted comment, and Southwest Gas Corporation (Southwest) and Southern California Gas Company (SoCalGas) submitted replies to that comment.

PG&E's comment was limited to two matters; one a minor technical issue, and the second substantive in nature. The replies of both Southwest and SoCalGas were limited to opposition to PG&E's proposed substantive changes on the second issue.

The minor technical issue raised by the PG&E comment relates to the bounds of the Northwest Sector service territory of Area E, and is well taken. Ordering Paragraph No. 2 of the ALJ's proposed order has been modified to make the more definitive delineation suggested by PG&E.

The remaining and more substantive issue relates to the full requirements contract of PG&E and Southwest, and Southwest's desire to be able to obtain gas directly from suppliers other than PG&E. The ALJ's proposed decision left to the contracting parties, as of the present juncture and for future negotiations, the question of whether the "all requirements" provision should be removed or modified, and if so, under what circumstances or conditions.

PG&E and Southwest in 1982 signed a 10-year all requirements contract. PG&E has expressed willingness to modify this agreement to permit Southwest to purchase gas from whomever it pleases, for transportation over the PG&E system to Southwest's facilities in accordance with the rules and rates set by this Commission. To the extent that it has been more convenient to access gas through SoCalGas transmission lines, PG&E has arranged for taps off the SoCalGas lines and interutility transport by PG&E over the SoCalGas lines for ultimate delivery to Southwest. Southwest receives core-elect service and receives all its requirements from PG&E's core portfolio.

These arrangements were freely adopted by the signatory parties as reasonable in 1982 and were approved by the Commission by Resolution G-2929 in 1983. We believe in the sanctity of contracts. That one party today might improve its situation by modifications is no compelling reason for Commission intervention.

But that 1982 contract was adopted against a backdrop of requirements, then present and projected, from then existing Southwest service areas, certificated or tacitly entered. Today's decision vastly enlarges Southwest's certificated service area. As to the remaining years on the 1982 agreement, the parties are contractually bound, at least as that agreement applies to the requirements from Southwest service areas that existed until today. In the not too distant future at conclusion of the present agreement, the parties will be free to negotiate anew, although as the ALJ pointed out, Southwest places at risk its PG&E derived core-elect service if Southwest elects to swing.

As to the supply requirements emerging for the substantial Southwest service areas being certificated by today's decision, we believe different circumstances may suggest reasonable interim modifications to the agreement. PG&E raised the specter of customers being able to freely swing between serving utilities.

The ALJ's proposed decision did not address the service territory concept in its discussion of the service agreement because the service territory concept is simply not applicable in this situation. Southwest is not a stationary end-use customer located in PG&E's service territory, but rather a dynamic, fast-growing distribution utility whose own territory is rapidly enlarging.

It is now quite obvious that there will be an increasing need for Southwest to take gas directly from SoCalGas pipelines if certain areas are to be served. It is the economic and logical way to provide service, and Southwest and SoCalGas should have the opportunity to negotiate a sales arrangement where SoCalGas is the logical source, and there is no rational need for any interutility arrangement with PG&E for these particular areas. There is simply no rational basis to prohibit direct access to SoCalGas facilities where their location requires SoCalGas to be the de facto supplier. Where SoCalGas uses its system exclusively to transport on behalf of Southwest, there is no reason why PG&E should be involved at all. Therefore, PG&E's requested modification of the ALJ's proposed decision to require or suggest that SoCalGas would transport Southwest-owned gas "through interutility arrangements with PG&E" is unnecessary.

Across the years, PG&E and Southwest have mutually benefited from a successful business and regulatory relationship, and have brought reasoned common sense to their bargaining table, thereby mutually working out most differences. Now that the divisive service territory issues are being resolved, there is little reason not to renew that relationship. As the ALJ stated, "we leave it to the parties to modify their agreement to remove or modify the 'all requirements' provision," subject only to the requirement that any changes conform to applicable Commission policy, rules, and regulations.

Except for the change to Ordering Paragraph 2 we adopt the ALJ's decision as our own.

Statement of Facts

To understand the issues raised by this application, it is necessary to have some knowledge of past actions of the respective parties, and of certain earlier Commission decisions.

The Competitors

Southwest, a corporation existing and organized under the laws of California, came into existence in 1931 in Barstow, California. That same year it purchased the business of Harold G. Laub, who held certification from this Commission to distribute and sell liquefied petroleum gas to the residents of Barstow, Victorville and adjacent communities. Southwest prospered, and in 1951, when a natural gas transmission line was constructed pursuant to Commission authorization across Southwest's service territory by another gas utility, by Decision (D.) 45883 Southwest was authorized to purchase and resell natural gas from that utility for distribution and resale within Southwest's territory. Today Southwest serves approximately 68,000 customers in San Bernardino County alone and is one of the 10 largest gas distributors in the United States, serving, apart from San Bernardino County, portions of Placer County and portions of Nevada and Arizona.

SoCalGas, wholly owned California corporate subsidiary of Pacific Lighting Company, is a gas corporation engaged in the purchase, transportation, distribution, and sale of natural gas to over 4 million customers in Southern and Central California. In San Bernardino County SoCalGas serves over 100,000 customers in the City of San Bernardino and 2,300 customers in the communities of Wrightwood and Pinon Hills. In 1930, when Harold G. Laub was seeking authority to serve Barstow and Victorville, SoCalGas appeared at the hearing and stated it did not object to the applicant serving those communities.

Since 1905 PG&E has been an operating public utility corporation, existing and organized under the laws of California. It is engaged principally in the business of furnishing electric

and gas services in California. In San Bernardino County PG&E presently serves a number of large industrial class users as well as providing service to an unspecified number of residential and commercial customers.

**Sources of Supply and
Early Marketing Agreements**

Following the end of World War II discovery of additional natural gas sources within California fell behind ability to meet increasing demand. The major California gas companies had to augment their sources materially and were forced to seek natural gas supplies out of State. As relevant in this proceeding, both PG&E and SoCalGas took steps to import gas from the Southwest. Both found El Paso Natural Gas Company (El Paso) able and willing to sell them gas to be delivered at the Arizona border. With reference to potential impact in the High Desert area of San Bernardino County, PG&E acted first.

In 1949 PG&E obtained authorization to construct a 34-inch, 506 mile long natural gas transmission pipeline to extend from Topock on the Arizona border, across San Bernardino County passing near Barstow, through Kern County to a point southeast of Bakersfield, and thence generally northwesterly through Kettleman, Panoche, and Hollister to terminate at Milpitas, south of San Francisco.

For its part, SoCalGas and a then affiliate company had jointly constructed a 30-inch pipeline to serve the Los Angeles Metropolitan area with out-of-state gas. It ran from Blythe across Riverside County, and deliveries began in 1947. Later, in the mid-1950's, SoCalGas constructed a second 30-inch pipeline to receive additional El Paso gas at Topock, transporting it across

San Bernardino County through Newberry and Victorville to Palmdale in Kern County, thence to Newhall in Los Angeles County. Soon thereafter, another 30-inch transmission pipeline was authorized from near Needles to receive natural gas from Transwestern Pipeline Company. This line crossed to Newberry. From Newberry a 34-inch transmission line was extended southwestward between the Lucerne and Apple Valleys, past Hesperia and through Cajon Pass to Orange County.

The PG&E transmission line across San Bernardino County passes in close proximity to Barstow and Victorville, both communities then served with liquefied petroleum gas by Southwest. The PG&E line also crossed Southwest's service territory. The residents of Barstow and Victorville wanted to convert from liquefied petroleum gas to natural gas. The adjacent PG&E pipeline offered opportunity for Southwest to tap into a supply source for natural gas.

With these developments the stage was set for the evolution of a natural and mutually beneficial business relationship between the two utilities.

PG&E and Southwest first entered into agreement in 1951 whereby PG&E would sell natural gas from its Topock-Milpitas transmission line to Southwest for resale to Southwest's domestic and commercial customers. The agreement was to extend 10 years. During these early years the two utilities generally cooperated in meeting the developing requirements of the High Desert area of San Bernardino County. Their understanding generally was that Southwest would serve the domestic and commercial needs while PG&E would directly serve the large interruptible industrial customers. In 1952 the initial agreement was amended to relax somewhat the Southwest restriction to domestic and commercial customers. (At that time the Federal Power Commission had jurisdiction over such resales of interstate natural gas. In 1954 the "Hinshaw Bill" amended the Natural Gas Act to remove the federal jurisdiction in

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situations where the gas is ultimately consumed within the state, and the sale for resale within the state is regulated by the Public Utilities Commission of that state.)

As Southwest's customer base grew new supply agreements with PG&E were reached. In 1955 PG&E agreed to deliver increased volumes for resale, including volumes not to exceed 2 million cu. ft. daily per customers for smaller Southwest interruptible customers. In exchange Southwest agreed not to object to PG&E serving directly all customers whose daily requirements would exceed 2 million cu. ft. While by D.51915 the Commission sanctioned implementation of the agreement, the parties were also put on notice that approval could not and would not limit the Commission in authorization of future service by Southwest if such service was determined to be justified by public convenience and necessity, as provided by law. In 1957 this service division point was increased by joint agreement to 3 million cu. ft. daily. (See D.55552 sanctioning the agreement.)

The 1953 "Conditional" PG&E
Service Territory Authorization

It was also in this early period of the Southwest-PG&E relationship that PG&E was authorized to enlarge the capacity of its Topock-Milpitas pipeline. At the same time PG&E was authorized to serve a service area based upon that pipeline. Consonant with the provisions of PG&E's San Bernardino County franchise (Ordinance 714), the Commission granted PG&E a service territory extending across San Bernardino County to be confined within a 20 mile wide strip extending equally to each side of the pipeline. But since this strip would cut across Southwest's certificated area, PG&E was not to serve within Southwest's territory as it was then or might later be defined by the Commission. Pertinent ordering paragraphs of D.49101 in 1953 specifically provided additionally that PG&E:

- "6. Before rendering service to any new customer within the certificated area in San Bernardino County, shall first submit

the name, location and proposed gas load of such customer to this Commission."

- "7. Shall not serve any new customer outside the certified area in San Bernardino County or from taps off the Topock-Milpitas line in San Bernardino County except upon further certificate of this Commission first obtained."

The Service Territories that Evolved

During this period of general cooperation between Southwest and PG&E, the former expanded its service territory extensively, with PG&E's consent using as many taps off the PG&E Topock-Milpitas main transmission lines and the PG&E 12 inch Hinkley-Victorville and 10-inch Daggett-Cushenbury lines as were necessary. This Southwest expansion was out of its original Barstow-Victorville service area into Apple Valley, Lockhart (1955), the Lucerne Valley area (1956), the Hinkley and Camp Irwin area (1957), Hesperia (1957), and the Big Bear Lake areas (including Metcalf Point, Big Bear City, North Bay, Moonridge, Fawnskin, and the Mariana Ranchos Subdivision) (1964).

For its part, PG&E constructed a 12-inch transmission line, north from and tapping the Topock-Milpitas pipeline, to Trona in the upper High Desert to serve American Potash and Chemical Company and West End Chemical Corporation as well as domestic and commercial needs in the communities along the way (1955). The PG&E Hinkley-Victorville and Daggett-Cushenbury transmission lines were constructed primarily to provide interruptible volume service to large industrial customers such as Riverside Portland Cement Corporation and Southwestern Cement Corporation near Victorville (1956) as well as Southwestern Cement's quarry near Black Mountain (1965), the Kaiser Permanente Cushenbury Cement Plant (1956), and taps for Southwest's local domestic and commercial needs. Later service was provided to the Cool Water Electric Generating Plant and the Solar 1 Steam Generating Plant in the Yermo area. Within

its 20 mile wide certificated service area PG&E provides domestic and commercial service in the Newberry Springs and Kramer Junction areas.

In the southwest corner of San Bernardino County, SoCalGas tapped from its 30-inch Topock-Palmdale pipeline to construct and run a 4-inch distribution gas line southward, adjacent to and paralleling the County's western border, and today serves 2,300 domestic and commercial customers in Pinon Hills on the desert floor and in Wrightwood further south on the north slope ascending southward into the San Gabriel Mountains. Also within the southern area of the County, in the mountainous area south of Hesperia and north of San Bernardino, SoCalGas serves the Valley of Enchantment-Lake Arrowhead area. And over the San Gabriel Mountains SoCalGas also serves the City of San Bernardino.

The respective service territories that had evolved by the early 1980 period are depicted in Appendix A, Map 1.

End of the Honeymoon Period

Following a new 10-year term exclusive gas supply agreement signed in 1982 between Southwest and PG&E, the longstanding relationship between the two began to break down. While not affecting PG&E's existing large industrial customers with requirements in excess of 3 million cu. ft. per day, the agreement opened the way for Southwest thereafter to compete with PG&E for large industrial customers. In addition, sometime in 1984 Southwest realized that it was serving more than 500 residential customers in areas contiguous to but outside the eastern boundaries of its certificated service area. Some of these, north of Yermo and near the cement plant, at Cushenbury, were technically within PG&E's certificated service territory, but were being served by Southwest with at least the tacit acquiescence of PG&E. About this same time Southwest learned that PG&E was installing facilities to provide gas service to Solar Energy Generating Station (SEGS) Unit No. 1 near Daggett in what is Southwest certificated service

territory. Consequently, on January 31, 1985 Southwest filed Advice Letter 359 asking to expand its certificated area to include those areas where it was providing service. But the Advice Letter went somewhat beyond that as Appendix A, Map 2 shows, and sought also to embrace areas previously certificated to PG&E (principally along PG&E's Milpitas-Topock pipeline). PG&E protested.

Over succeeding months in 1985 the Commission Advisory and Compliance Division (then called Evaluation and Compliance Division) held informal conferences with the two utilities in an attempt to resolve the dispute. During this period Southwest agreed to withdraw Advice Letter 359. By mid-1985 Southwest and PG&E had reached a common understanding of the current status of each's respective rights in existing gas service areas in the rectangular 45 mile by 60 mile area east of the westerly township line of Range 5 West, and north of the southerly township line of Township 2 North. This understanding also specifically listed the "open" or uncertified areas in this 2,700 square mile area of San Bernardino County. The understanding recognized that either utility could serve gas customers in these open areas in accordance with the provisions of PU Code § 1001 and applicable Commission decisions. Separately but concurrently, and in recognition that the services at Daggett were within Southwest's certificated territory, PG&E agreed to transfer to Southwest the SEGS I and SEGS II plants. However, the July understanding was not totally dispositive of all issues between Southwest and PG&E with related gas supply issues remaining unresolved.

Early in 1986 PG&E received service requests from two industrial customers for service within the 20 mile wide service territory certificated to PG&E astride the PG&E Milpitas-Topock pipeline; one in the PG&E territory east of Southwest's territory, and one in the PG&E territory west of Southwest's territory. The eastern customer was All American Pipeline, seeking service at its Cadiz Pumping Station and its Ludlow Heater Station, respectively

55 and 25 inside PG&E's territory (eastward from Southwest's territory). The western location customer was LUZ Engineering, seeking service at that time for its SEGS units III and IV within PG&E's service territory some 10 miles west of the nearest Southwest territory. At the same time LUZ indicated a general location near the SEGS III and IV locations for its contemplated SEGS units V and VI, also well within PG&E's service territory. Accordingly, on April 18, 1986, in accordance with its interpretation of the requirements placed upon it by Ordering Paragraph 6 of D.49101 that "Before rendering service to any new customer within the certificated area in San Bernardino County, [it] shall first submit the name, location and proposed gas load of such customer to this Commission," PG&E notified the Commission of its intent to serve these customers. But Southwest, having earlier obtained transfer of SEGS units I and II (25 miles to the east at Daggett in Southwest's acknowledged territory) to itself from PG&E, also wanted these SEGS units in the PG&E territory. Therefore Southwest asked the Commission to hold up service authorization to PG&E so as not to prejudice discussions Southwest was having with PG&E to this point. And our Legal Division advised that the Ordering Paragraph 6 language of D.49101 required "some discretionary action" by the Commission before PG&E could proceed with service. CACD suggested that PG&E file an Advice Letter to accommodate the unusual situation. ✓

On October 3, 1986 PG&E filed Advice Letter 1380 G with the stated purpose of updating its San Bernardino County service area map, reflecting no area changes but fully describing the boundaries. In addition, PG&E sought clarification of the language of Ordering Paragraph 6 of D.49101 to indicate that it does not require Commission approval, only notification. PG&E contended that advice letter procedures applied to every new customer in its territory would violate customer confidentiality by making customer-specific information part of the public record. On ✓

October 17, 1986 Southwest protested the PG&E Advice Letter, asserting that some of the area PG&E included in its asserted service area "overlaps" or "should be within" Southwest's certificated service territory.

And on October 16, 1986 Southwest attempted to file what was to become Application (A.) 86-10-042. However, the Commission, not wanting to hold up service to LUZ Engineering or American Pipeline, by Resolution G-2702 issued November 14, 1986 authorized PG&E to temporarily provide service to both pending further determination in A.86-10-042 of which should ultimately provide service on a permanent basis, and postponed determination of the relationship of respective service territories to that same application.

In its October 16, 1986 filing Southwest asserted that it had long been recognized by the Commission as "the gas distribution company in San Bernardino County," and its application showed that Southwest sought a certificate of public convenience and necessity to add substantial areas to its presently certificated service area. It stated that the public interest required it to undertake construction of facilities involving deviations from its filed Rule No. 15 to provide service to contiguous areas, to the proposed new SEGS plants, and for future growth in these extended areas. It further stated that these extensions would require additional taps from both PG&E and SoCalGas pipelines. Making the statement that "Even a small company can be very competitive in serving residential and small commercial customers if it has some industrial or other large customers to consume 'valley' gas and balance its load factor," Southwest went on to propose that PG&E relinquish to Southwest a 25 mile long portion of PG&E's 20 mile wide service territory strip which straddles PG&E's Milpitas-Topock pipeline between the Kern County line and Southwest's presently certificated service territory; the area that includes the sites of the LUZ SEGS units III and IV and the subsequent SEGS units V and

VI. It is this PG&E service area that Southwest describes as having been only "conditionally" certified by D.49101 in 1953 to PG&E.

After review the Commission's Executive Director on January 12, 1987 rejected the Southwest application as filed, stating it was incomplete in that it lacked adequate location and construction details of the proposed infrastructure as well as a Proponent's Environmental Assessment. About the same time Southwest and PG&E agreed to meet with Commission staff to explore the possibility of amicable resolution of the issues involved.

In March 2, 1987, Southwest, substituting a revised Section 6.1 to its earlier filing, refiled A.86-10-042. In the substitution Southwest sought the same extended service area as before but asserted that it would not be necessary to construct or extend pipeline facilities as previously stated to seek its objectives; but rather that it would be able to provide needed service within the provisions of Rules 15 and 16, and that as to the SEGS III and IV units, it proposed to purchase PG&E pipeline facilities to provide the service. Southwest went on to state that should it become necessary to construct or extend pipelines it would at such later time seek appropriate Commission authority to do so. The full extent of Southwest's expansion of service area sought by A.86-10-042, including that proposed to be relinquished to Southwest by PG&E, is depicted in Appendix A, Map 2.

While earlier PG&E had sought and obtained extension of time to file a protest to the Southwest application, that time subsequently had been extended by a December 15, 1986 ruling by ALJ Norman R. Johnson until the earlier of (1) mutual resolution by the parties of the issues, or (2) notice of breakdown of settlement discussions. For a while it appeared that a settlement was possible within a general framework whereby PG&E would yield some of its certificated service area as well as the right to compete in substantial portions of open territory in return for an

understanding that the area would be served under a team concept with Southwest distributing gas and PG&E wholesaling and transporting the gas. However negotiations broke down when it appeared that while Southwest wanted to be able to compete freely for the six industrial customers on the High Desert that PG&E had been serving pursuant to Commission certification for over thirty years, as well as to substantially expand its service territory, Southwest also wanted to be able to freely swing in its choice of gas service between PG&E and SoCalGas. On June 1, 1987 the Commission was advised of an irreconcilable impasse.

On June 26, 1987 PG&E filed a protest to Southwest's A.86-10-042 which had been accepted for filing following revisions. By its protest PG&E asked for dismissal of the application, contending that the appropriate procedural vehicle was not an application but rather a filing pursuant to General Order 96-A's Part I-E. It further contended that the application should be rejected because Southwest, with regard to areas sought which are presently certificated to PG&E, had failed to show that PG&E's services were in any way inadequate, and with regard to open areas sought by Southwest that PG&E stands ready to provide service as soon as it economically can be provided in these areas. PG&E also asked that its revised service area map (as filed in Advice Letter 1380-G) be accepted; that PG&E be authorized permanently to serve the All American Pipeline and the LUZ Engineering (SEGS III and IV units) presently temporarily served since these installations are all located within PG&E's certificated service area, and asked that the requirement of prior notice imposed on PG&E by D.49101 be removed. In the alternative it requested hearings to determine which utility is best situated to provide gas service in the open territory.

On July 17, 1987 SoCalGas advised the ALJ that it has an interest in Southwest's application and would enter the

proceedings. Because of ALJ Johnson's case load, A.86-10-042 on September 15, 1987 was transferred to ALJ William R. Stalder. In turn, because of his earlier staff work with the parties seeking a compromise, ALJ Stalder recused himself and on October 28, 1987 the application was assigned to ALJ John B. Weiss.

On August 7, 1987, PG&E filed Advice Letter 1423-G to notify the Commission of its intent to provide natural gas service within its certificated service area to two additional facilities of LUZ Engineering, SEGS units V and VI.

Following a duly noticed prehearing conference on November 23, 1987 in San Francisco, there was an initial exchange of prepared testimony filed December 18, 1987 with filings being made by Southwest, PG&E, and SoCalGas. These were followed by rebuttal prepared testimony filings on January 15, 1988. By a letter dated January 15, 1988 The Division of Ratepayer Advocates (DRA) advised that while it would participate, it had no position to present unless new issues were raised beyond those of the December 18, 1987 filings, or unless gas supply contracts or other gas supply agreements were suggested as the basis for division of the disputed territory. However, DRA subsequently did not participate further.

On January 25 and 26, 1988 in San Francisco, after due notice, there were evidentiary hearings before ALJ Weiss, followed the evening of February 24, 1988 by a public hearing in Phelan, California attended by over 300 persons of whom 23 presented their views.

Evidence of the Parties

Southwest presented its evidence through the testimony and exhibits of John L. Mayo, Senior Vice President/Operations, Derald W. Neagle, Manager of Operations Staff, Edward F. Kulas, Manager of Gas Supply and Production, and Jaime Ramirez of its Rate Department who substituted for Roger C. Montgomery, Manager of the Rate Department. PG&E presented its evidence through testimony and

exhibits introduced by Gary Green, Kern Division Marketing Manager, and Harold O. La Flash, a Supervising Commercial Analyst in the Commercial Department of Marketing and Customer Services. For its part SoCalGas presented its evidence and exhibits through A. E. Russell, Manager of Marketing Staff.

Southwest's amended application seeks, first, a certificate of public convenience and necessity to extend and regularize its certificated service area to include customers it currently serves who are located outside its present authorized area, communities contiguous to or near its present authorized area, SEGS units presently served by PG&E, and future customers who locate elsewhere in the proposed extended area; and secondly, authority to exercise its county wide franchise to serve existing and future customers within the proposed extended service territory. Subsequently Southwest, by its Initial Brief, expanded this to propose that the Commission order PG&E and Southwest to modify their existing gas supply agreement to provide that Southwest may obtain its gas supplies from whomever it chooses, and to propose that the Commission provide that any PG&E customer located within Southwest's present certificated service territory have the option to switch to Southwest.

**The Five Expansion
Areas Sought By Southwest**

Southwest sets forth five geographical areas outside its presently certificated service area where Mayo testified it currently is serving customers (These are identified on Appendix A, Map 2). It proposes that these geographical areas be now certified to it and be added to its existing service territory. In the aggregate these areas are quite substantial and would approximately double Southwest's present service area. It was Mayo's testimony that Southwest views these areas as contiguous distribution areas and to be the result of growth from its current distribution area. Southwest views itself as the only local natural gas utility with the facilities, equipment and personnel necessary to provide those

services appropriately required of a local distribution company in a reasonable proximity to these specific areas.

Neagle presented evidence that in each of these 5 geographic areas Southwest is serving customers--in all over eleven hundred. In the Northeast, in Area A north of Yermo, an area certificated to PG&E as part of that utility's 20-mile wide service strip straddling the PG&E Milpitas-Topock pipelines, Southwest serves 58 customers in a mobile home park. This service appears to be in accord with an earlier PG&E-Southwest understanding whereby Southwest was to serve residential and commercial customers and PG&E would serve the large volume industrial customers. Thus Southwest serves here with at least the tacit consent of PG&E. Along the central part of Southwest's eastern service border in the Bell Mountain area, Area B, Southwest serves 198 residential-commercial customers near the Southwest Cement plant served by PG&E at Black Mountain. In Area C, an area certified to PG&E wherein PG&E serves the Kaiser Cushenbury cement plant, Southwest serves 4 ranches. In Area D, east of Bear City, Southwest serves 710 customers.

Area E is a very large territory. "L" shaped, it varies in depth roughly from seven to twenty-four miles. It extends north to south approximately one hundred miles, and west to east on the leg of the "L," approximately forty miles. It is contiguous to Southwest's western and southern boundaries. However, the northernmost twenty mile sector is territory certificated, albeit what is generally stated to be "conditionally," by D.49101 in 1953 to PG&E. On its western and southern side, Area E is contiguous to SoCalGas certificated service territory: Apart from the PG&E certificated sector in the north, Area E is "open" territory. Neagle testified Southwest is providing service to a small enclave of 164 residential-commercial customers just inside the territory, south of Hesperia.

In the northern PG&E sector, Area E is crossed by the PG&E Topock-Milpitas and the Kramer-Trona transmission pipelines. Near the waist of the "L" the territory is crossed by SoCalGas' Palmdale transmission pipeline. The southern leg of the "L" is crossed by SoCalGas' Transwestern transmission pipeline through the Cajon Pass. These latter two are interconnected by a north-south SoCalGas pipeline along the eastern border of the open territory. Southwest has no pipeline facilities in Area E. ✓

There are two sectors of Area E of immediate interest to both Southwest and SoCalGas. Mayo testified that Southwest has plans in hand to serve a newly announced residential development to be styled Las Flores Ranch. It is to consist of one thousand one-acre home sites and lies south of Hesperia in the open territory of Area E. Approximately twenty miles to the northwest in the open territory lie the communities of Phelan and Baldy Mesa. Mayo testified that at times over recent years Southwest has done feasibility studies of these community areas, had received inquiries and some applications for service, but had had to face the reality that the areas were too sparsely populated to make it economically feasible to construct a distribution system to serve them. And Southwest having no supply facilities in the area would have to depend upon SoCalGas for a tap, not only to serve Phelan and Baldy Mesa, but also Las Flores Ranch. Southwest's nearest high pressure source of supply of its own would be near Bear Valley Road and Interstate 15. Kulas testified that Southwest presently has 2 taps to SoCalGas supply pipelines arranged by PG&E, and 2 more are in planning or under construction. Under the PG&E-SoCalGas arrangement Southwest pays a 10 cents IMMBtu exchange charge. Kulas testified further that Southwest has contacted SoCalGas seeking a direct sale and/or transportation arrangement. It would seek a supply source from SoCalGas to serve the Phelan-Baldy Mesa area as well.

Russell, in opposition to Southwest's plans, testified that SoCalGas also plans to serve Phelan and Baldy Mesa. He testified that while Southwest has no supply facilities anywhere near, SoCalGas has several pipelines traversing this Southwestern Sector of Area E, and by means of its No. 4-39 north-south distribution pipeline just to the west over the area boundary SoCalGas has been serving some 2,300 gas customers in Wrightwood and Pinon Hills, the latter merely 4 miles from Phelan. Russell's testimony also covered Southwest's negotiations to serve the Snowline Unified School District southeast of Phelan. He pointed out that SoCalGas' big No. 1185 transmission line runs south from the Adelanto area down Baldy Mesa Drive and at one point is a mere sixty-four feet from the Baldy Mesa Elementary School which SoCalGas proposes to serve.

Russell testified to the point that SoCalGas' investors and ratepayers have paid to develop its transmission system with the legitimate expectation that when new business opportunities proved economical SoCalGas could pursue such opportunities for itself. SoCalGas, he asserted, is prepared and anxious to provide its own service in the open territory, and does not believe it should be required to make its facilities available to an adjacent utility for the sole purpose of enabling that adjacent utility to compete with SoCalGas for new business in an area where SoCalGas has the facilities and is prepared to serve. Russell contends that since Southwest has no facilities at all in the open territory it seeks to acquire, much less any economically close, even within its present certificated territory, Southwest is in no position to expand into most of the fast growing sectors of the open territory, much less assert claim to it as Southwest service area.

The point of a counter argument advanced by Southwest witnesses was that the least cost arrangement to customers to provide service at Phelan and Baldy Mesa would be the two utilities, Southwest and SoCalGas, acting in concert, with

Southwest distributing the gas, purchased from whomever Southwest chooses, and SoCalGas providing the pipeline transportation, with the latter being paid a fully compensatory transportation rate. Russell disputed this, insisting that SoCalGas considered that the appropriate least cost principle would be a comparison of the total cost to each competing utility to put mains and service in the ground, conversion costs (petroleum gas to natural gas) if any, and the on-going rate the customer thereafter would have to pay for the commodity delivered. SoCalGas disagrees that a utility should be granted the exclusive authority to serve open areas solely to allow it to better plan development of its system, and contends it should not be required to allow Southwest to make extensions from SoCalGas facilities to serve open territory. It is unnecessary because SoCalGas is prepared to extend its own facilities.

Mayo contended that while it should not be the sole criterion, the least cost principle was a factor to be considered. He testified that 1987 filed data indicates that Southwest had the lowest incremental cost for gas delivered of the three parties to this proceeding, and that its main extension costs are the lowest, and its service line costs lower than PG&E's. He claimed that Southwest was able to purchase gas cheaper at the California border than either SoCalGas or PG&E. But on cross-examination he could not state what data supported his conclusions, and Kulas testified that he did not know the components used in the other utility's reports, or whether they included something other than simply spot gas prices. Mayo believes it important that the local distribution utility be clearly identified by the community it serves and that Southwest is identified locally as the distribution company in this high desert region. Russell disputed any claim on Southwest's part to exclusive recognition, noting that SoCalGas also has a significant presence in this border area, with both utilities serving parts of the mountainous area on the East near Big Bear, and SoCalGas serving Wrightwood and Pinon Hills to the west. While

Southwest has well equipped service center facilities in Victorville, SoCalGas has the same at Wrightwood and the City of San Bernardino. It is significant in this respect that none of the three doubted the ability of any other to staff up or meet service needs in Area E.

The relative location of Phelan, Baldy Mesa, the School District, and Las Flores Ranch to present utility service areas and pipeline facilities is shown on Appendix A, Map 3.

The Phelan Evening Public Hearing

At the well attended lengthy evening hearing held February 24, 1988 in Phelan, each of the three utilities had knowledgeable staff personnel available to answer floor questions. Since PG&E's facilities were a long way distant from Phelan, making it very unlikely that PG&E would become the serving utility in that particular portion of the open area sought by Southwest, essentially the local preference for service was between Southwest and SoCalGas' proposals.

The local residents who testified, it developed, with some exceptions, were interested not so much in who, but rather in how soon they could obtain natural gas service. Two residents and a mobile home park operator, all located on one road, and a Victorville builder were among the seven expressing interest in service from Southwest. Some of these apparently had been influenced by an article in a local newspaper which purportedly had misstated the terms of such service. Four residents were interested only in getting service and eleven favored keeping the open area open to competition from all utilities.

The Northern "Conditionally" Certified PG&E Sector of Area E

We next turn to the Northern Sector of Area E, the sector "conditionally" certified to PG&E by D.49101 in 1953. This sector, straddling the PG&E Topock-Milpitas pipeline, and containing the Tap for the PG&E Trona pipeline at Kramer Junction, is an area of particular interest to PG&E as well as Southwest. The SEG's III to

VII plants presently conditionally served by PG&E are in this sector as well. Sparsely populated to date, PG&E also provides residential and commercial service at Kramer Junction. See Appendix A, Map 4.

Southwest's Mayo testified of that utility's opposition to PG&E's requests that PG&E be permanently authorized to serve these SEGS units. Mayo testified that "Southwest believes it has the right to extend service to these particular SEGS customers at the locations in question," and that under the circumstances PG&E should be decertified as to the area and that Southwest should be designated as the local distribution gas company authorized to provide natural gas service to customers in the area. While conceding that it was PG&E's Topock-Milpitas pipeline installation through the County in the early 1950 period that enabled Southwest to convert its liquefied petroleum gas customers to natural gas and thus achieve its present growth, Southwest asserts that it is generally viewed as the gas distribution company in the area; that PG&E has been generally content to allow Southwest to serve residential and commercial customers, showing interest only in large volume industrial customers. Southwest asserts that it is only recent growth pattern and population projection studies that spark PG&E and SoCalGas interest to look over these areas around Southwest's present service territory. When questioned about the alleged Southwest "right to serve" in PG&E's certificated territory, Mayo stated that this "right" derives from the fact that "If it is to bear the burden of being the local distribution company for residential and commercial customers, that those customers are also entitled to the economic benefits that can derive from large volume industrial sales." Montgomery testified for Southwest that estimated aggregate annual requirements for the SEGS plants in the PG&E certificated Northern Sector of Area E, if transferred to Southwest, would result in an approximate 8 percent reduction in rates. This, he testified, would benefit the

residents who live and work in the communities closest to the SEGS plants. In essence, Montgomery asserts PG&E wouldn't even miss the loss. This, PG&E disputed.

La Flash and Green in rebuttal testified that PG&E has been and remains willing and able to provide residential and commercial service to new customers, both within this Northern Sector of Area E and the rest of PG&E's certificated area along the Topock-Milpitas and other pipelines, and in the open areas, when and as such service becomes economically feasible. They pointed to the adjoining PG&E areas just across the county line in Kern County as examples of this willingness and ability to serve. The high desert not ending at the County line, Green described PG&E's activity in attaching new customers, with extensions on either side of PG&E's Kramer-Trona pipeline along U.S. Highway 395, including service to Inyokern (to be completed in February, 1989) to 2,000 customers, to Bear Valley Springs to serve 600 customers, and a new \$1.4 million office/service center just completed in Ridgecrest. Green testified of current evaluations of the economics of extensions to Randsburg and Johannesburg. Green further stated that in the first quarter of 1989 PG&E will be serving about 14,000 customers in the high desert and has added pay stations in Boron and North Edwards, just over the County line to the west. Present residential-commercial service is provided in the northern PG&E certificated part of Area E only at Kramer Junction, the only settled area. On cross-examination Green testified that PG&E has refrained from making service evaluation studies in its San Bernardino County certificated areas in recent years pending final resolution by the Commission of the present proceedings.

La Flash testified that PG&E had every right to connect the SEGS plants in this Northern Sector of Area E, its certificated area. He testified that the notice requirement placed upon PG&E by Ordering Paragraph 6 of D.49101 in 1953 is unique in the utility's

experience; that it is an anachronism, and that no other utility in California has such a requirement. He observes that Southwest, today one of the 10 largest gas distribution utilities in the country, is no longer a "Mom and Pop" utility to be sheltered from competition, and asks that PG&E be relieved of the requirement. He testified that acquiring and connecting these SEGS plants required substantial marketing and administrative efforts by PG&E in analyzing and preparing proposals, negotiating terms and conditions, and arranging for permits and land rights for facilities, in addition to constructing the required facilities. He asserts Southwest has no basis or reason on which it can base any so-called "right" to take over these customers or ask that PG&E be decertified. PG&E asserts that it "vigorously contests any notion that it is willing to give up its existing customers," and argues that Southwest has made no allegations whatsoever that PG&E is providing inadequate service in any way in its existing service area or to existing customers. La Flash states that as an economic basis develops to introduce service into this sparsely inhabited area PG&E will serve just as it has those residential and commercial customers already at Kramer's Junction.

PG&E and SoCalGas Counter
Proposals for "Open" Territory

Both PG&E and SoCalGas object to Southwest's territorial proposals, testifying that such blanket annexation proposals are anticompetitive; that by attempting to annex all the "open" high desert in this southwestern part of San Bernardino County without knowing when or exactly where future growth will occur, Southwest tries to make sure it will not face any competition for that potential market. Russell testified that since Southwest has no facilities at all in the open territory it seeks, much less any economically close within its presently certified territory, it is in no position to expand into some of the fast growing sectors, much less claim it as Southwest service territory. Indeed, SoCalGas contends that with supply facilities already in place, it,

not Southwest, is best situated to provide service in areas of the open territory such as the Phelan-Baldy Mesa sector of Area E.

The thrust of the testimony offered by both PG&E and SoCalGas was that Southwest's growth in San Bernardino County was not obtained by pre-certification of large chunks of open service territory, but rather had been obtained in the manner which both contend should be applied in the open areas; that is, as people move into the open territory and it becomes economic to serve them, the utility for whom it is most economical should make extensions in the normal course of business, and that the territory thus entered should be annexed to their recorded service territory pursuant to the provisions of General Order 96-A. According to the testimony of La Flash and Russell, there are the procedures under which PG&E and SoCalGas have operated in both Kern and San Luis Obispo Counties for many years with general success. It is further suggested that a half mile band off either side of any line extension would constitute an appropriate service area for annexation. It is the contention of both PG&E and SoCalGas that by this application to annex large chunks of sparsely populated open territory Southwest seeks to achieve administratively what it could not achieve competing in the normal course of business.

However, the evidence with respect to Area A, B, C, and D also points to a conclusion that Southwest has been the only utility providing a de facto presence in those areas as a local gas distribution company providing residential and commercial service. The same cannot be said with respect to Area E.

**Modification of the 12/31/82
10-Year PG&E-Southwest Supply Agreement**

Kulas testified that the PG&E-Southwest 12/31/82 agreement was a 10 year full requirements contract whereby PG&E supplied gas to Southwest pursuant to PG&E's Rate Schedule G-63. In addition, following the 1985 Commission authorization for transportation of customer-owned gas over a utility's pipeline, Southwest has had a short-term transportation agreement with PG&E

whereby the latter transports Southwest owned gas over PG&E's pipelines from the California border. But this agreement does not provide for transportation of Southwest owned gas acquired within California. Southwest also has discussed with SoCalGas the possibility of direct sales and/or transportation arrangements between SoCalGas and Southwest.

Accordingly, in addition to its territorial annexation proposals, Southwest in this application asks the Commission to instruct PG&E and Southwest to modify their existing agreement, removing the "all requirement" limitations. Kulas and Mayo testified that Southwest wants access to a variety of gas sources in order to optimize supply economics and operational flexibility. Kulas testified that direct service from SoCalGas in some instances may be necessary to provide the increased volume and pressure required for reliable Southwest service to some future customers. He stated Southwest was currently considering short- and long-term purchase contracts with other pipelines and is actively pursuing storage arrangement, transportation and exchange agreements with pipelines which have access to PG&E, Northwest, and El Paso; all to develop a long range supply portfolio.

La Flash responded by testifying that in recent gas restructuring proceedings the Commission determined that customers should be free to obtain gas supplies from any possible source, and that to the extent the PG&E-Southwest agreement did not conform, a very simple amendment could accomplish that result. Upon request PG&E would comply. But La Flash expressed concern over what effect Commission permission to Southwest to take service directly from SoCalGas would do to PG&E's service obligation to Southwest. PG&E strongly objects to any notion that Southwest be permitted to freely swing between transporters or bypass PG&E entirely, because this would be detrimental to PG&E's other customers, who would then lose the Southwest contribution to margin. PG&E's position is that PG&E's obligation is in proportion to the core customers it is

serving, and if Southwest is authorized to take direct service from SoCalGas, it is logical to reduce PG&E's level of service obligation and its obligation to provide Abnormal Peak Day Supply protection. To the extent Southwest prospectively proposes to be free to swing, it must be prepared to proportionately yield guarantees of firm commitment during curtailments and for peak service.

Russell testified that SoCalGas had no position on possible modification of the PG&E-Southwest agreement. However, SoCalGas is opposed to providing gas service to Southwest when the only result would be to give Southwest a competitive advantage in the open service territory. SoCalGas further observes, even if it were authorized to charge Southwest a fee for use of its facilities, SoCalGas' competitive position in acquiring new customers would be reduced; the rate would not necessarily compensate for the business SoCalGas would forgo by being required to allow use of its facilities to compete. ✓

The All American Pipeline Customers

One of the customers currently temporarily supplied by PG&E was All American Pipeline Company. Resolution No. G-2702 left the permanent resolution of who should serve to this proceeding. Located within PG&E's Eastern Sector of the 20 mile strip straddling the Topock-Milpitas pipeline, a sector certificated to PG&E, the customers' facility nearest to Southwest territory is at least 30 miles east of Area A. PG&E asks that its authorization to serve these two facilities be made permanent.

Revision of Historic Service Arrangements

Finally, Mayo testified that Southwest also asks the Commission to provide that any customer historically served by PG&E who is located within Southwest's presently authorized service territory be given the option of switching to Southwest, and offers to compensate PG&E for the depreciated original cost value of such facilities as PG&E may have installed specifically to serve these

customers-to the extent Southwest elects to acquire them. These customers are the Riverside Cement Plant and the Southwestern Portland Cement Plant in Victorville, the Southwestern Portland Cement Plant at Black Mountain Quarry, the Kaiser Permanente Cement Plant at Cushenbury, and Southern California Edison Company's Cool Water Electric Generating Plant near Yermo. Southwest contends that such Commission action would constitute an appropriate means for redressing PG&E's past practice of reserving large volume industrial loads to itself, incident to establishment of "all requirements" supply agreements with Southwest which lacked equal bargaining power. ✓

PG&E's position is that Southwest casting itself as a powerless victim disregards the facts. PG&E points out that it was the existence of PG&E's transmission lines to serve different industrial customers in the high desert that first enabled Southwest to extend its residential-commercial service, and all of these PG&E served plants were served with Commission authorization to which Southwest could have objected. PG&E further argues that if these PG&E historical customers are to have the option to switch, so should Southwest's historical customers, and let such a "free-for-all" ultimately determine which utility the customers want to be "the" gas distribution company in the high desert. And PG&E would include the SEGS 1 and 2 plants located in areas dually certificated to PG&E and Southwest. PG&E asserts that there has been absolutely no showing that PG&E has been rendering inadequate service to its existing industrial customers, or that another utility could render superior service. See Appendix A, Map 5.

Submission

Following the last hearing, initial concurrent briefs were filed April 15, 1988, followed by final briefs. The matter was submitted for decision May 18, 1988.

Discussion

Southwest has indeed come a long way since the early 1930's when Harold G. Laub obtained certificates of public convenience and necessity to construct a gas conversion plant and exercise county franchises granted by Ordinances 335 and 336 to initiate liquefied natural gas service to 520 customers in 5 townships centered upon Barstow and 4 townships centered upon Victorville. The metered tank gas business grew and by 1951, apart from Barstow and Victorville, Southwest was also serving Oro Grande, Nebo, Daggett, Yermo, and Lenwood customers.

But it was in the early 1950's, after PG&E had completed its Topock-Milpitas pipelines and agreed to provide wholesale natural gas to Southwest for the latter's residential and commercial customers that Southwest really grew. Southwest constructed a 26 mile 4-inch line from PG&E's Hawes Station on the Topock-Milpitas line to Victorville to take delivery of the PG&E gas, and another 1 1/2 mile line from PG&E's pipeline at Bear Valley Road to serve Barstow, and receiving the benefits of PG&E's diversity of supply, even during years when El Paso supplies to PG&E were curtailed, Southwest prospered. In the mid-1950 period the two utilities cooperated, with PG&E constructing pipelines to serve large volume industrial customers such as Riverside and Southwest Cement plants near Victorville, and the cement plant at Cushenbury, while Southwest expanded its residential and commercial service to new areas such as Apple Valley, Lucerne Valley, Hinkley, Camp Irwin, and Hesperia. This was in accord with an agreement between the utilities where under PG&E would serve large interruptible customers located within Southwest's certificated area where gas requirements exceeded 3 million cu. ft. per day. (Agreement of July 8, 1957.)

During the 1960's Southwest followed up its earlier acquisition of a liquefied petroleum gas distribution system in the Big Bear area, and with the assistance of PG&E in making available

supply taps, it constructed a 16 1/2 mile long 6-inch transmission main to the area and began natural gas service in 1965. Thereafter Southwest determined that it wanted to be able also to serve large industrial customers within its by then expanded franchise area encompassing the entire county. Accordingly, when the new exclusive gas purchase agreement was negotiated in 1981-1982, the restriction on Southwest serving large industrial customers was deleted.

Southwest had come of age. Growth became explosive in 1983, and led to a 48 percent increase in customers between 1980 and 1986. Today in San Bernardino County Southwest profitably serves over 68,000 customers. It presents population growth estimates that project over a 200 percent increase by 1990 in its present certificated area. In the States of Nevada, Arizona, and California, Southwest currently serves approximately 820,000 customers. Today it is one of the 10 largest national gas distribution companies in the United States. Today Southwest is no longer a small local gas distributor, needing all the assistance it can get to survive. As this application amply demonstrates, it is a confident, aggressive, and solidly based competitor in San Bernardino County.

Against this backdrop we proceed to address the components of the application.

The Expansion Areas Sought

The area sought encompasses more than 40 townships spread over most of the periphery of a 10,000 sq. mile box. With few exceptions the territory consists of uninhabited areas of the California high desert. Our problem is to determine what course public utility development should follow to best reflect the public interest.

Both PG&E and SoCalGas advocate retention of the status quo of "open territory" which presently applies; with whichever utility for whom it is most economical to make extensions being the

one to do so and serve as people move into an area and cluster with sufficient density to make it economical to serve them. If more than one utility can do so, they would leave it up to customers to choose.

Southwest seeks to incorporate the entire area into its service territory on a precertificated basis, thereby reducing the potential for protracted and expensive disputes and removing potential for customer confusion, bearing in mind there is always the prospect for decertification as to any situation where the utility was either incapable or unwilling to render service.

The PG&E and SoCalGas course has been our traditional approach, and generally it has served well in the more urban areas. But in large substantially uninhabited areas such as we are encountering in this proceeding there are other factors to be considered. Designation of a specific utility to exclusively serve a specific precertificated area will provide for more economically sized and located facilities for purposes of meeting future pressure requirements and undertaking appropriate reinforcements in a cost effective manner. The economic savings and operative efficiencies resulting from such advance planning and layout can represent a substantial benefit for the affected ratepayers in ensuing years. Customers clearly know who their local utility is. Another benefit is the rate uniformity that will prevail in a geographically defined and homogenous area. Customer choice is frequently developer's choice, particularly where, as in these areas, it is reasonable to assume that a substantial amount of the new residential load growth anticipated will occur as the result of subdivision development.

We do not believe that the public interest would best be served by precertifying the entire area Southwest seeks to that utility, particularly where Southwest is not in a position by itself to expand service into certain of the fast growing sectors, whereas other utilities are. Cooperative efforts to expand service

can work where the interests of the participating utilities are mutually fostered and benefited, but when those interests turn competitive cooperation ceases. Recent history, as well as the evidence in this proceeding, has shown us that to allow the present state of affairs to continue would only mean the spawning of new controversies and discord--not to the interest of the public. Allocation of specific service territories in some instances can serve to redirect utility efforts to a more constructive objective of public service. The evidence in this proceeding indicates that appropriate factors vary sector by sector. Accordingly, we will address the allocation sector by sector.

Area A: While these 2 townships, very sparsely populated, are part of the area certificated to PG&E by D.49101 in 1953, PG&E has done nothing other than the initial installation of pipeline and related facilities for transmission of out-of-state gas through the area. At least tacitly, if not actively through making taps available, it has been willing over the years to permit Southwest to provide and serve the 58 residential-commercial services that are present north of Yermo. Having allowed Southwest to establish the only de facto local distributor presence in the area, we conclude that the certification should be transferred to Southwest and will grant Southwest's application in this regard. ✓

Area B: These 18 1/2 townships have to date attracted few inhabitants other than in the Bell Mountain and Lucerne Lake areas. Again, although PG&E has installed 2 pipelines crossing much of the area, other than serving Southwest Portland Cement Plant at Black Mountain, there has been no effort on its part to extend service to residential or commercial consumers, leaving Southwest to do it, so that today Southwest serves the 198 customers who do have service. This mostly has been "open" territory. Surrounded on 3 sides by operative Southwest territory, rather than leave the potential for an island development within it, we will certify both the open area and the 4 northern townships

that have been within the PG&E certified strip to Southwest.
(Radisavljevic, D.90262 in A.58345, May 6, 1979.)

Area C: The 2 plus townships included were certificated to PG&E by D.53794 in 1956, in the anticipation that PG&E would serve the Kaiser Permanente Cement Company plant at Cushenbury and any employees who, it was expected, might build homes in the vicinity. PG&E is serving the cement plant, but the only 4 services in the area otherwise are to 4 ranches, and Southwest provides that service. Southwest provides the only residential-commercial service around the periphery of Area C, and again, rather than create the potential for a future service island deep in another utility's service territory, we will transfer the service territory to Southwest.

Area D: With no present or potential competition, Southwest already provides service to 710 customers in this township signed area adjacent to Southwest's Big Bear service area facilities. It will be certified to Southwest.

Area E, Southeastern Sector: In the 4 townships that lie to the east of Cajon Pass's Highway 15, Southwest presently serves 164 residential-commercial customers, albeit from a PG&E arranged SoCalGas supply tap to SoCalGas' No. 4000 36-inch pipeline which crosses the western half of the sector. Southwest has also developed an arrangement whereby it will also serve approximately 1,000 customers in the projected Las Flores Ranch development. However, Southwest must either extend its own facilities south from Bear Valley Road on Highway 15 or come to some arrangement with SoCalGas. Negotiations are already underway with Southwest proposing to buy gas direct from SoCalGas, or it is possible the 2 utilities may reach an arrangement whereby SoCalGas would transport Southwest owned gas to the area. Expansion south from Southwest's service area from the Hesperia area is a logical resolution of the service area issue here since the mountains along the southern part of the sector make it a natural boundary.

Southwest, apart from already serving in the sector, and having made a showing as to the need for service, has service facilities at Victorville, and provides a local distributor presence. We will certify this sector of Area E to Southwest.

Area E, Southwestern Sector: In this approximate 4 township sector the interests of Southwest and SoCalGas come into sharp conflict. SoCalGas has gas supply lines in place, straddling the entire area with 2 north-south pipelines, No. 1185 and No. 4-39, admirably suited to eventually loop the area. In addition, SoCalGas already provides service to over 2,300 residential and commercial customers in Wrightwood and Pinon Hills, just over the western boundary of the sector. Both Southwest and SoCalGas have been discussing service to Phelan and Baldy Mesa. Phelan is only 4 miles from Wrightwood; SoCalGas' 1185 pipeline runs down Baldy Mesa Drive. SoCalGas also provided evidence of advanced negotiations to serve the Snowline School District between Phelan and Baldy Mesa. The people who spoke at the Phelan evening hearing clearly wanted service as soon as possible without preference who was to serve. Service from SoCalGas would be quickly possible since SoCalGas has the supply facilities and is adamantly against being required to make its transmission facilities available to Southwest to enable the latter to compete in what SoCalGas regards as its backyard. SoCalGas cited Pac. Tel. & Tel. Co. v. Eschelman et al. (1913) 166 C 640 as authority for the proposition that to require SoCalGas to make its transmission lines available to Southwest in this matter would be an unconstitutional taking of property because, inter alia, the interconnection requirement was not necessary to provide service to customers, but rather only to give a competing utility an advantage at SoCalGas' expense. The Court, SoCalGas argues, reasoned that to allow competitors to interconnect with another utility's facilities would diminish the value of the facilities because such facilities would be less valuable in acquiring new business even though

compensation would be paid for their use. There was no evidence or reason to believe that Southwest could better serve Phelan or Baldy Mesa, or this sector. We see no significant cost advantage in the respective services. We conclude that the public interest is best served by this sector of Area E being certificated to SoCalGas.

Area E. The Northern Sector: We find it difficult to accord Southwest's proposal to strip PG&E of this service area sector and the SEGS plants III to VII, and give them to Southwest. This area was certified to PG&E by D.49101 in 1953, albeit "conditionally." But Ordering Paragraph 6 in that decision was placed there, not to afford Southwest any edge or veto power over PG&E customers to be added in the strip area, but rather because of the gas shortages of that era and to allow the Commission opportunity before additional load was obligated to review the supply situation and prospects before assenting. Ordering Paragraph 7 was included to make certain that Southwest's interests elsewhere in the utility's franchise area than the certificated 20 mile wide strip of PG&E territory would be considered before PG&E could add customers in open areas of the county where both of the utilities were franchised.

The original purpose of Ordering Paragraph 6 has long since been obscured with the passage of time. When it surfaced again in the PG&E Advice Letter 1380-G process we erred in concluding the language used required more than notification. No useful purpose today is served by mandating the advice letter procedure for each new customer PG&E proposes to add within its own certificated service area. No such requirement is placed on any other utility in California, nor on PG&E in areas outside San Bernardino County. The notice requirement is an anachronism with no present justification for it. It creates unnecessary paperwork and use of Commission time. We will delete the requirement.

The Commission on numerous occasions has addressed the standard required for taking customers and certificated service

areas away from a public utility to give them to another. (See Clara Street Water Co. v. Park (1948) 48 CPUC 154, Super-Temp Corp. v. Suburban Wtr. System (1963) 61 CPUC 385,386. See also In Re SoCalGas Co. (1963) 61 CPUC 465.) Such action is based upon a failure to adequately serve. In Cal Water Service Co. (1983) 10 CPUC 2d 690,696, we determined that a utility should be protected with regard to the integrity of its filed service territory, and absent a strong and clear showing that a demand had been made upon that utility to provide service within that filed service territory under the terms of its filed tariff, and that utility had been unable or is unwilling to comply, no change in the service area of the utility should be made. Here there has been absolutely no showing that PG&E has failed to serve anyone who seeks service and is reasonably placed to be economically served. To the extent that there is any residential-commercial development in this 4 plus township sparsely settled sector certificated to PG&E, PG&E has served it at Kramer Junction. In addition, PG&E has aggressively marketed the area to secure the SEGS plants III to VI for the area, albeit "conditionally" or temporarily to be served by PG&E pending resolution of this proceeding. While a utility has no legal obligation to undertake to serve an area, once it accepts certification from this Commission it must thereafter serve all customers within its service area to the reasonable limit of its facilities (Brockman v. Smithson Springs Wtr. Co. (1957) 56 CPUC 28). PG&E has done just that. Aside from the obvious fact that Southwest "wants" this sector, or more truthfully, the industrial customers located on it, Southwest has absolutely no legal claim to either and we see no reason to disturb PG&E's rights with regard to it. There is as much a community of interest west for any persons or industries that might settle in the sector as there is eastward.

Area E, "Open" Territory: With regard to the approximate 6 townships lying between the PG&E certificated northern part of Area E and the SoCalGas Palmdale transmission line, the area

dominated by the Shadow Mountains, we have no evidence. Accordingly, we will leave it as "open" territory where any utility that can do so economically, is free to extend service.

The 12/31/82 10-Year PG&E-Southwest Supply Agreement

We leave it to the parties to modify their agreement to remove or modify the "all requirements" provision. La Flash testified that PG&E would do so upon request. But Southwest cannot have its cake and eat it too. If Southwest elects to freely swing between transporters or otherwise bypass PG&E entirely, PG&E will lose the contribution to margin now provided, and modifications must also be made to relieve PG&E of any obligation to provide firm service. As we stated in D.87-09-069, dated May 29, 1987, at page 63:

"Gas which moves in interutility transportation will flow to the utilities themselves and to their wholesale and noncore retail customers."
(Emphasis added.)

The All American Pipeline Customers

Located far eastward from the nearest Southwest territory, the All American Pipeline facilities included in this proceeding will be permanently certificated to PG&E. The requirements of Ordering Paragraph 6 of D.49101 will also be deleted as no longer applicable to the 20 mile wide strip of PG&E certificated territory lying east of Newberry Springs.

The Industrial Customers Historically Served by PG&E within Southwest Territory

These cement plants and the Cool Water Electric Generating plant were all contracted for by PG&E many years ago, and there has been no showing that they are inadequately served. That PG&E "might not miss them" were they transferred to Southwest, and that they would enable Southwest to lower rates, cannot be grounds for transferring PG&E customers to Southwest. Southwest, at the time these connections were made, was in no position to provide service to them, and it acquiesced in their certification

to PG&E at the time each was authorized to PG&E (see D.53610 (1956) re Southwest Portland Cement Corp. and Riverside Cement Corp. near Victorville; D.53794 (1956) re Kaiser Permanente Cushenbury Cement Plant; and D.68695 (1965) re Southwest Portland Cement at Black Mountain--outside Southwest's present certificated area; and D.59781 (1960) re SoCalEdison's Cool Water Electric Generating Plant). Those certification proceedings were the time to register protests, if any there were, not this late date. That today Southwest may be in a position to serve these plants or that its service territory has been expanded to enclose them is not sufficient reason nor does it provide a basis for a transfer unless PG&E would be willing to do so. Southwest is not a ward of this Commission entitled to any preference. This Commission is prohibited from granting any preference or advantage to any corporation (PU Code § 453(a)). Based on Commission precedent and the law, as well as fairness and the record in this proceeding, there are no grounds for awarding customers historically served satisfactorily by PG&E to Southwest.

It is interesting to note that while Southwest believes the Commission should allow PG&E customers within Southwest service territory to have the option of requesting service from Southwest, i.e., to switch, Southwest is unwilling to consider allowing its customers the option of switching to PG&E, even though, based upon the advantages inherent in a volume business, its witness Ramirez on cross-examination conceded that Southwest's commercial and residential customers in the high desert area would be better off if Southwest sold its facilities to PG&E.

Findings of Fact

1. Southwest, PG&E and SoCalGas are California public utility corporations engaged in the transportation and distribution of natural gas within California subject to the jurisdiction of this Commission.

2. In the period 1931-1951, Southwest was a local distributor authorized by this Commission to distribute liquefied petroleum gas to residents of nine townships centered upon Barstow and Victorville in San Bernardino County.

3. After World War II discovery of additional natural gas sources within California fell behind demand, compelling the major gas companies to seek and import supplies from out-of-state.

4. Both PG&E and SoCalGas constructed large size gas transmission pipelines and related facilities to bring out-of-state natural gas to California metropolitan areas.

5. PG&E in the early 1950's, pursuant to Commission authorization, constructed, and subsequently had to expand, a Topock to Milpitas pipeline across San Bernardino County.

6. In 1951 PG&E agreed to wholesale natural gas to Southwest, thereby bringing cheaper energy to the customers of Southwest, enabling Southwest to convert to natural gas and to achieve substantial expansions.

7. By D.49101 in 1953 PG&E was authorized a 20-mile wide strip service territory across San Bernardino County and straddling the Topock-Milpitas pipelines, but PG&E was not to serve within Southwest service territory as then defined, or as might later be awarded and recognized by the Commission. Ordering Paragraph 7 of the decision provided that PG&E was not to serve any new customers outside the PG&E certified strip territory without further certification by the Commission. ✓

8. To ensure that proposed new gas loads within the PG&E certified strip territory would not overburden or endanger supplies for PG&E's metropolitan areas, Ordering Paragraph 6 was included in D.49101. It required that particulars relative to any proposed additional customers within the PG&E certified strip territory in the County be first submitted to the Commission.

9. Successive exclusive requirement contracts to 1982 between PG&E and Southwest generally provided, inter alia, that

Southwest would serve residential, commercial and the small volume industrial loads while PG&E would serve large industrial loads over 3 million cu. ft. per day.

10. During the 1950-1960 period PG&E constructed distribution pipelines off its Topock-Milpitas main pipelines: (1) from the Hinkley area, a 12-inch line to and past Victorville to serve several large cement plants nearby Victorville, and to the east of Victorville for another cement plant, and (2) from the Daggett area a 10-inch line to Cushenbury to serve another large cement plant. Southwest constructed a 4-inch distribution line off the PG&E Topock-Milpitas line to the Victorville area, and subsequently extended it southeastward to Big Bear in 1965.

11. During this period PG&E also furnished a number of taps from its pipelines to accommodate Southwest's local service requirements and arranged through exchange agreements with SoCalGas for several taps to SoCalGas transmission lines where such best served Southwest needs.

12. By 1980, Southwest, with 42,500 customers in San Bernardino County was experiencing unprecedented growth, and desired to itself provide service to large industrial customers.

13. The 1982 revisions of the PG&E-Southwest full requirements agreement removed restrictions on Southwest securing and serving large industrial customers, leading to Southwest taking on service to SEGS plants I and II in 1984.

14. Subsequent disagreements between PG&E and Southwest led to Advice Letter filings and protests on both sides, unsuccessful negotiations, and finally to this application and its protests.

15. By this application, and related incorporations, Southwest seeks a certificate of public convenience and necessity to add approximately 40 townships lying on its present periphery to its present certificated service territory. Included are areas presently certificated to PG&E. It further seeks transfer to it of service to SEGS plants III to VII as well as service to the

4 cement plants and the Coolwater Electric Generating Plant historically served by PG&E.

16. Today Southwest is among the top 10 largest gas distribution companies in the Nation with over 820,000 customers, of whom 68,000 are in San Bernardino County. We find that Southwest is "of age."

17. Southwest in support of its application points to the fact it already serves over 1,100 customers in various sectors of the area it seeks.

18. SoCalGas, with several major transmission lines as well as a distribution line crossing the Southwestern Sector of the area Southwest seeks, is ready, willing, and able to promptly serve the Phelan and Baldy Mesa Communities and has advanced negotiations to serve the Snowline School District.

19. Southwest, also desirous of serving Phelan, Baldy Mesa, and Snowline, has conducted surveys and studies to that end, but with no supply facilities of its own anywhere near, would require access to SoCalGas facilities to do so, a prospect SoCalGas strongly resists.

20. In a very well attended evening hearing in Phelan February 24, 1988, the local residents of the area expressed principal interest in early service rather than in what gas company would serve.

21. PG&E and SoCalGas object to Southwest's territorial acquisition proposals, proposing instead retention of the "open" territory status.

22. On balance, the arguments for and against "open" status indicate that the public interest would be best served in this situation by certification to specific utilities of some areas and retention of other territory as "open."

23. Consolidated by reference in Commission Resolutions in Advice Letter proceedings is PG&E's request for removal of the "Notice" requirement of operating Paragraph 6 of D.49101, retention

of SEGS plants III-VI as well as the historically served large industrial plants both within and without Southwest territory.

24. The original reasons for inclusion of Operating Paragraph 6 in D.49101 have long since ceased to exist. Further retention of it would only serve to discriminate against PG&E. There is no reason not to delete it with regard to PG&E's remaining certificated areas straddling the Topock-Milpitas pipeline.

25. In the Northwest Sector certificated to PG&E of the area Southwest seeks, PG&E is currently providing residential-commercial service at Kramer Junction, and industrial service under temporary certification to the SEGS plants III-VII located within PG&E's certificated area. No evidence has been provided that PG&E is providing inadequate service or has failed to meet requests for service.

26. Aside from its desire to have these SEGS plants III-VI, Southwest provides no evidence of its "right" to serve them.

27. With regard to the individual sectors of the area Southwest seeks to certify by this application, we find the evidence indicates that the public interest would be best served by the following action of the Commission:

Area A: Recertify to Southwest

Area B: Certify to Southwest

Area C: Recertify to Southwest

Area D: Certify to Southwest

Area E, Southeast Sector: Certify to Southwest

Area E, Southwest Sector: Certify to SoCalGas

Area E, Northwest Sector: Reaffirm
certification to
PG&E

Area E, Central West Sector: Retain as "open"
territory

28. In addition, the dispositions set forth in Finding 27 would save the Commission considerable manhours consumed in resolving the constant disputes of the past years over individual certifications.

29. The All American Pipeline customers should remain with PG&E and PG&E should be permanently certified to serve them.

Conclusions of Law

1. The application as to service territory proposals should be granted in part and denied in part, as provided in the following order.

2. Ordering Paragraph 6 of D.49101 should no longer be applicable.

3. The SEGS Plants III-VII, and the All American Pipeline Plants should be permanently certified to PG&E.

4. The large load industrial plants historically served by PG&E and certificated to PG&E, whether located in Southwest's present certificated service territory or in the Area B and C territories to be certified to Southwest, should remain certificated to PG&E.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity to provide natural gas service within Areas A, B, C, D, and the Southwest Sector of Area E (east of Interstate 15) of San Bernardino County, as depicted in Appendix A, Map 6 of the attached Opinion, is granted to Southwest Gas Corporation (Southwest).

2. A certificate of public convenience and necessity to continue to provide natural gas service within the 10-mile band on either side of Line Nos. 300 within the Northwest Sector of Area E of San Bernardino County, as generally depicted in Appendix A, Map 6 of the attached Opinion, is confirmed to Pacific Gas and Electric Company (PG&E).

3. A certificate of public convenience and necessity to provide natural gas service within the Southwest Sector of Area E of San Bernardino County, as depicted in Appendix A, Map 6 of the attached Opinion, is granted to Southern California Gas Company (SoCalGas). ✓

4. After the effective date of this order, Southwest, PG&E, and SoCalGas shall file a service area map of the respective service territory granted each in compliance with General Order Series 96.

5. Ordering Paragraph 6 of Decision 49101 shall no longer be applicable to PG&E.

6. The Solar Energy Generating Station plants Numbers Three through Seven, temporarily certified to PG&E by various resolutions of this Commission, are permanently certified to PG&E.

7. Southwest's request that Riverside Cement Corporation, Southwest Portland Cement Corporation, Southwest Portland Cement Quarry (at Black Mountain), the Kaiser Permanente Cushenbury Cement Plant and the Coolwater Electric Generating Plant, historically supplied by PG&E, be transferred to Southwest is denied.

8. The All American Pipeline Company facilities located in PG&E certificated territory east of Newberry Springs shall be permanently certified to PG&E.

9. PG&E's certificate of public convenience and necessity to continue to offer to provide natural gas service to new customers in Areas A and C of San Bernardino County, as depicted in Appendix A, Map 6 of the attached Opinion is cancelled effective the date of this order, and PG&E is relieved of its public utility obligations as to those areas.

10. The Central Sector of Area E of San Bernardino County as depicted in Appendix A, Map 6 of the attached Opinion shall remain open territory pending further order of this Commission.

11. PG&E having agreed to revision of the full requirements agreement, that issue is moot.

12. In all other respects, the application is denied.
This order becomes effective 30 days from today.
Dated DEC 19 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners




I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY

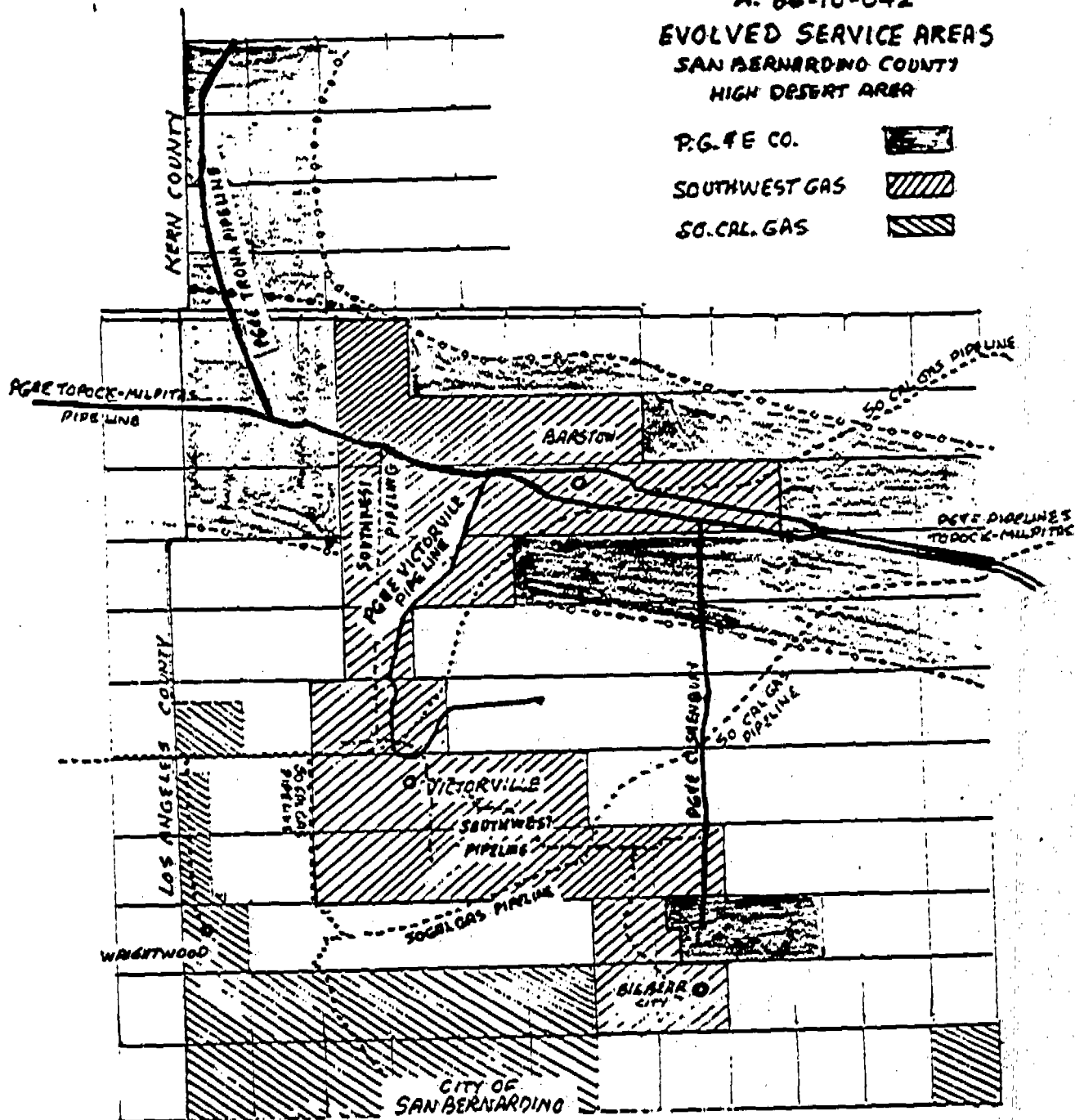
Vicor Weiss
Vicor Weiss, Executive Director

APPENDIX A - MAP 1

A. 86-10-042

EVOLVED SERVICE AREAS SAN BERNARDINO COUNTY HIGH DESERT AREA

P.G. & E. CO.	
SOUTHWEST GAS	
SO. CAL. GAS	



APPENDIX A MAP 2

A.86-10-042

SOUTHWEST'S PROPOSED SERVICE AREA EXPANSION HIGH DESERT AREA

P.G. & E. CO.



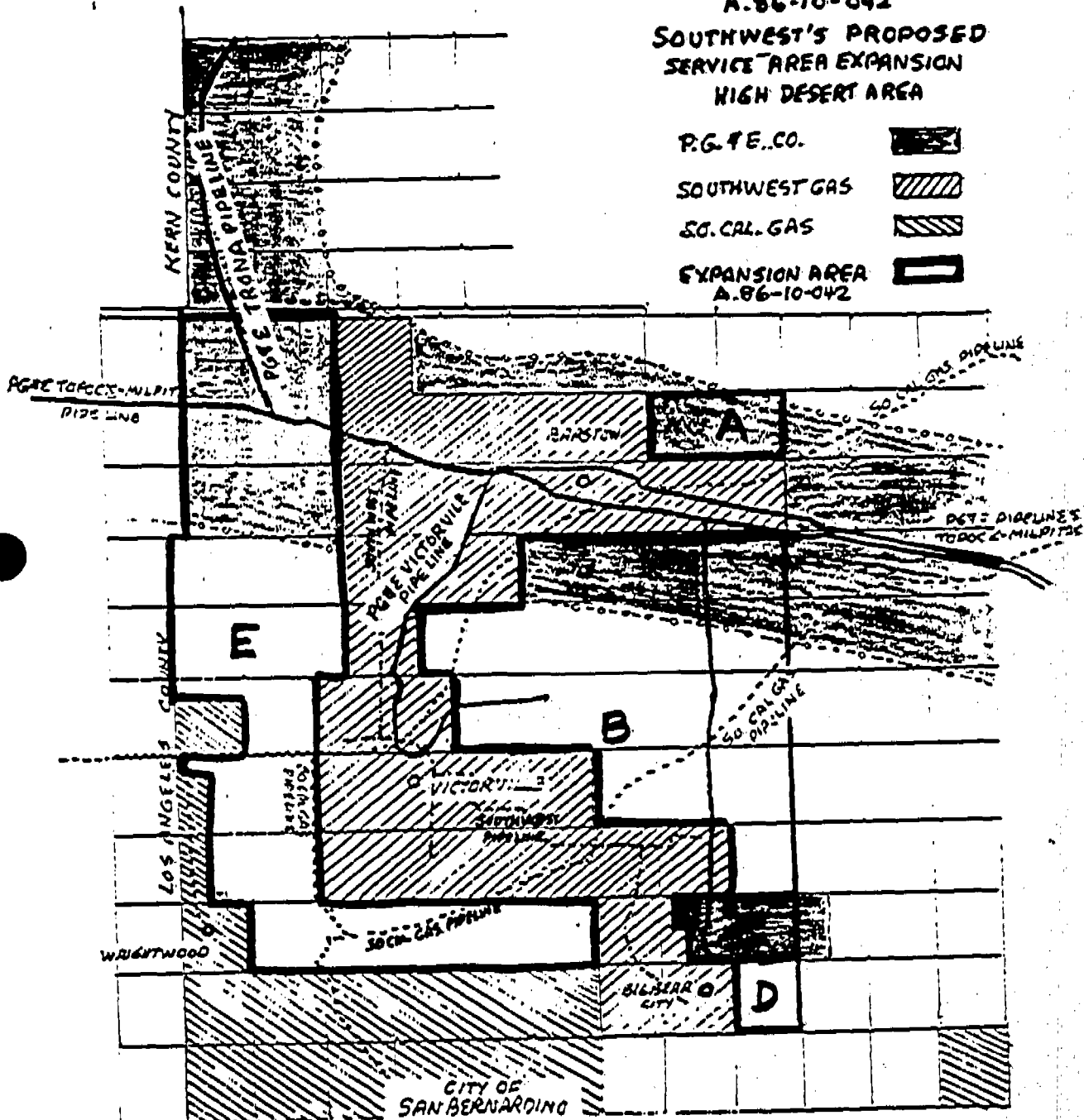
SOUTHWEST GAS

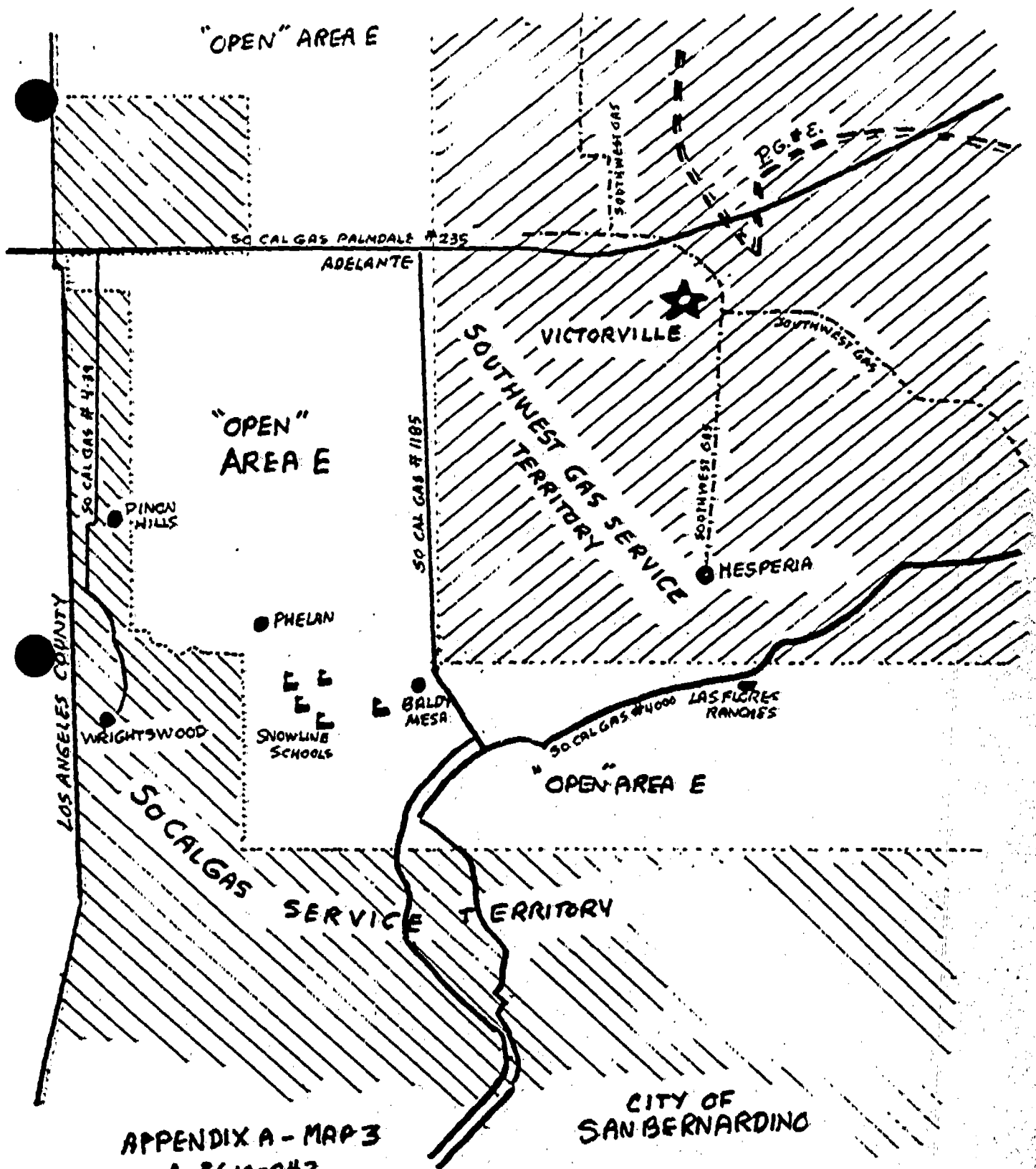


S.C. CAL. GAS



EXPANSION AREA
A.86-10-042







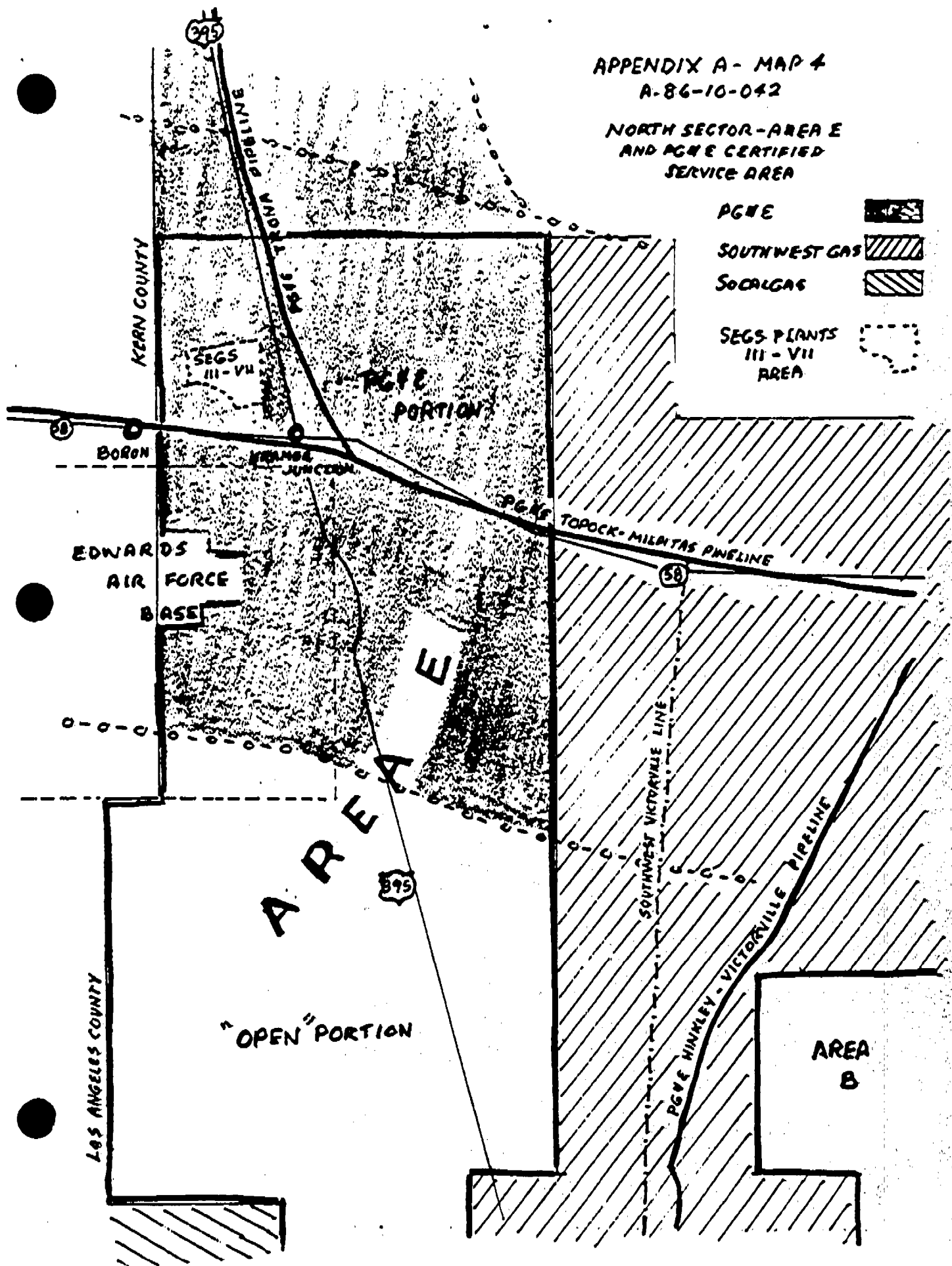


APPENDIX A - MAP 3
A. 8610-042
SOUTH & SOUTHWEST-AREA E
SAN BERNARDINO COUNTY
HIGH DESERT AREA

APPENDIX A - MAP 4
A-86-10-042

NORTH SECTOR - AREA E
AND PG&E CERTIFIED
SERVICE AREA

PG&E 
SOUTHWEST GAS 
SOCAL GAS 
SEGS PLANTS
III - VII
AREA 



A. 86-10-042

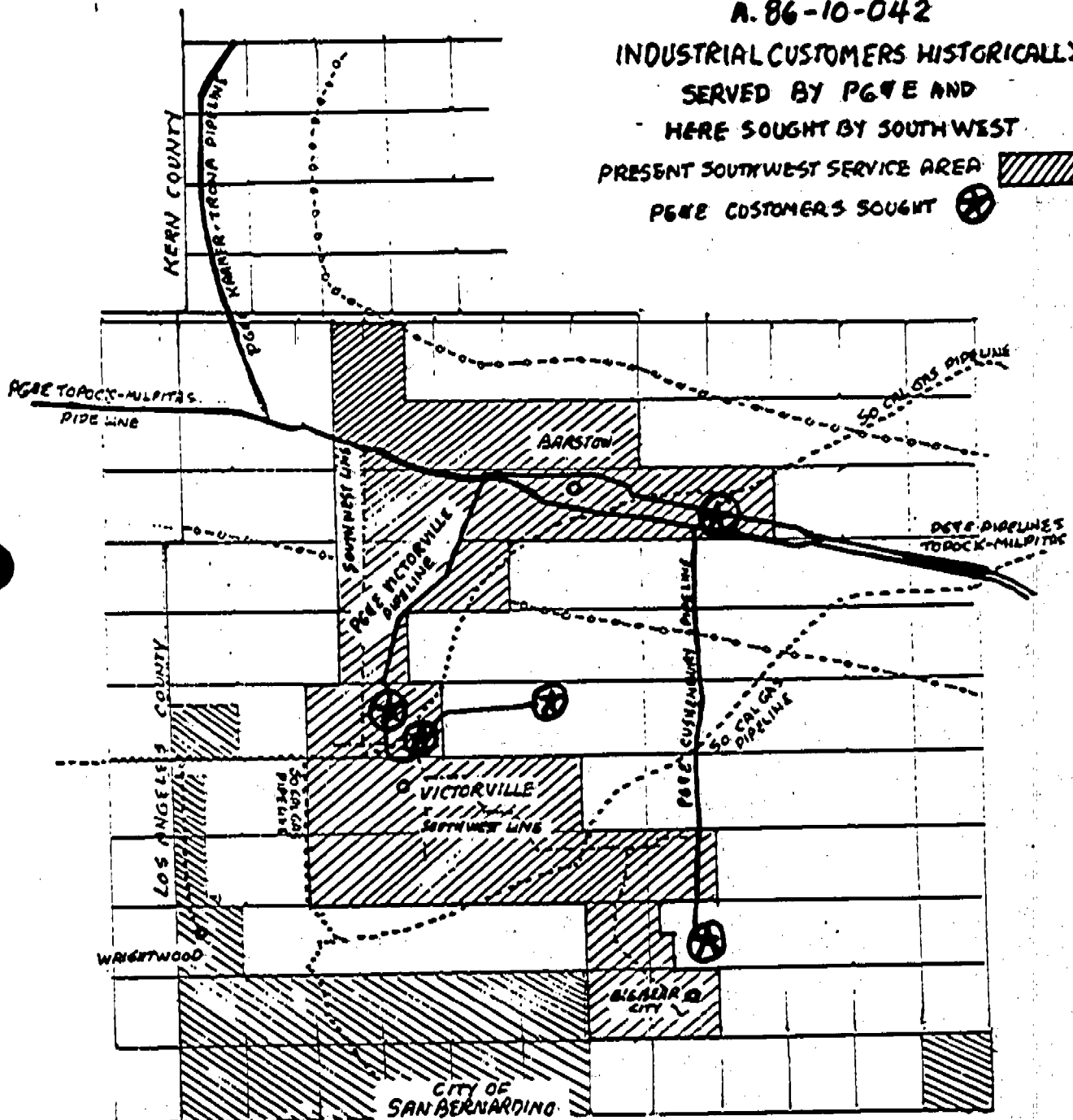
A. 86-10-042

SERVED BY PG#E AND

HERE SOUGHT BY SOUTH WEST

PRESENT SOUTHWEST SERVICE AREA:

PLEASE CUSTOMERS SOUGHT



APPENDIX A - MAP 6

A-86-10-042

CERTIFICATION GRANTED
BY THIS DECISION

A - SOUTHWEST

B - SOUTHWEST

C - SOUTHWEST

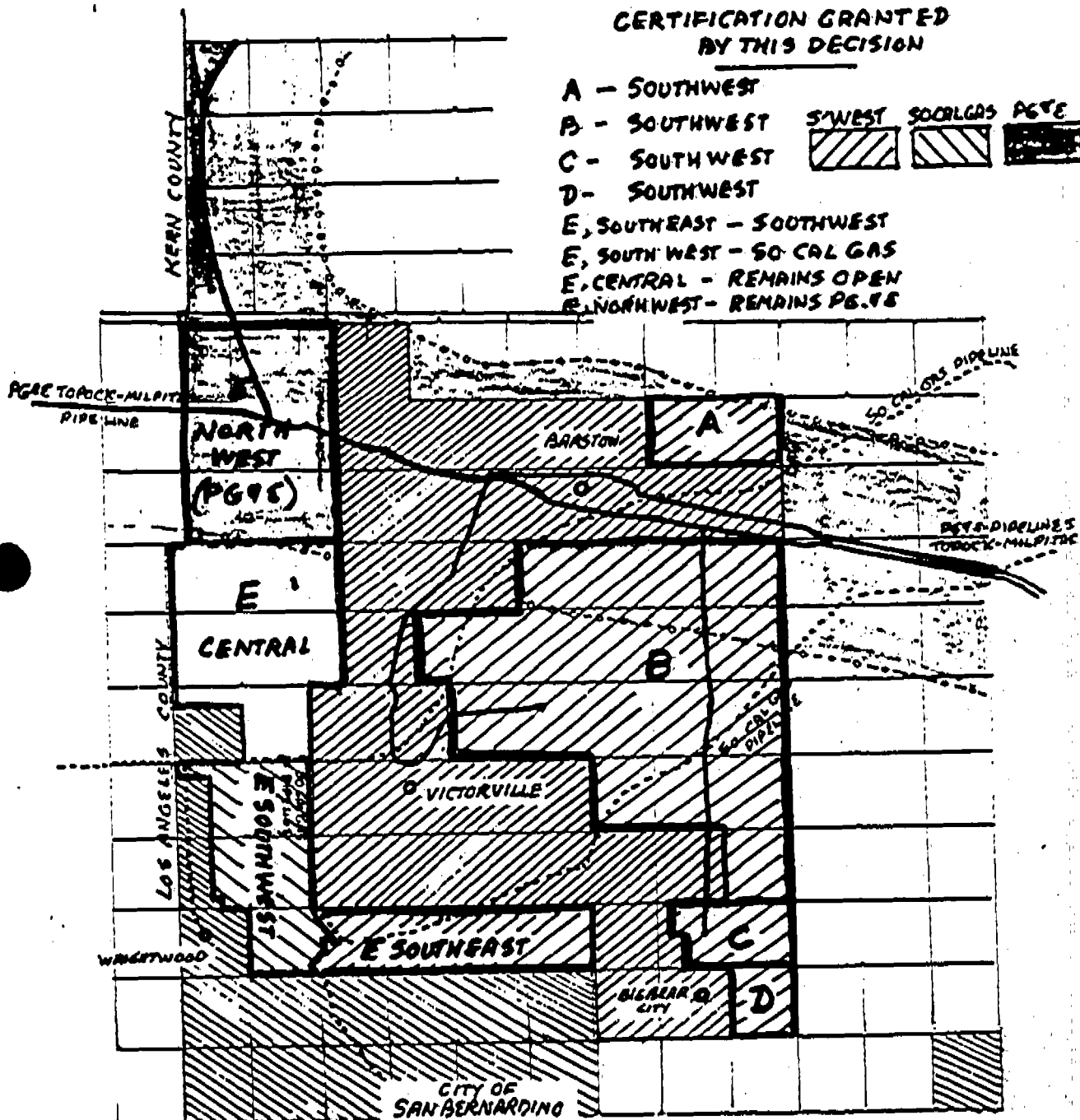
D - SOUTHWEST

E, SOUTHWEST - SOUTHWEST

E, SOUTHWEST - SO CAL GAS

E, CENTRAL - REMAINS OPEN

E, NORTHWEST - REMAINS PG&E



Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SOUTHWEST GAS CORPORATION for a)
Certificate of Public Convenience)
and Necessity under Article 1 of)
Chapter 5 of the California Public)
Utilities Code to regularize and)
extend its service area to provide)
natural gas service and to exercise)
all permits, easements, and)
franchises which may be used or)
useful in connection therewith in)
the vicinities of Baldwin Lake,)
Baldy Mesa, Bell Mountain, Erwin)
Lake, Lake Williams, Oak Hills,)
Phelan, and Woodlands, San)
Bernardino County, California and in)
certain other portions of the)
unincorporated area of San)
Bernardino County, California)
located contiguous to Southwest Gas)
Corporation's existing certificated)
service area.)

Application 86-10-042
Filed October 16, 1986;
amended March 2, 1987)

Lawrence V. Robertson, Jr., Attorney at
Law, for Southwest Gas Corporation,
applicant.

Robert B. McLennan, Attorney at Law, for
Pacific Gas and Electric Company,
protestant.

Peter N. Osborn, Attorney at Law, and
George Hannah, for Southern California
Gas Company, interested party.

Carol L. Matchett, Attorney at Law, and
Jean Jarjoura, for the Division of
Ratepayer Advocates.

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OPINION

Statement of Facts

To understand the issues raised by this application, it is necessary to have some knowledge of past actions of the respective parties, and of certain earlier Commission decisions.

The Competitors

Southwest Gas Corporation (Southwest), a corporation existing and organized under the laws of California, came into existence in 1931 in Barstow, California. That same year it purchased the business of Harold G. Laub, who held certification from this Commission to distribute and sell liquefied petroleum gas to the residents of Barstow, Victorville and adjacent communities. Southwest prospered, and in 1951, when a natural gas transmission line was constructed pursuant to Commission authorization across Southwest's service territory by another gas utility, by Decision (D.) 45883 Southwest was authorized to purchase and resell natural gas from that utility for distribution and resale within Southwest's territory. Today Southwest serves approximately 68,000 customers in San Bernardino County alone and is one of the 10 largest gas distributors in the United States, serving, apart from San Bernardino County, portions of Placer County and portions of Nevada and Arizona.

Southern California Gas Company (SoCalGas), wholly-owned California corporate subsidiary of Pacific Lighting Company, is a gas corporation engaged in the purchase, transportation, distribution, and sale of natural gas to over 4 million customers in Southern and Central California. In San Bernardino County SoCalGas serves over 100,000 customers in the City of San Bernardino and 2,300 customers in the communities of Wrightwood and Pinon Hills. In 1930, when Harold G. Laub was seeking authority to serve Barstow and Victorville, SoCalGas appeared at the hearing and

OPINION

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PG&E and Southwest in 1982 signed a 10-year all requirements contract. PG&E has expressed willingness to modify this agreement to permit Southwest to purchase gas from whomever it pleases, for transportation over the PG&E system to Southwest's facilities in accordance with the rules and rates set by this Commission. To the extent that it has been more convenient to access gas through SoCalGas transmission lines, PG&E has arranged for taps off the SoCalGas lines and interutility transport by PG&E over the SoCalGas lines for ultimate delivery to Southwest. Southwest receives core-elect service and receives all its requirements from PG&E's core portfolio.

These arrangements were freely adopted by the signatory parties as reasonable in 1982 and were approved by the Commission by Resolution G-2929 in 1983. We believe in the sanctity of contracts. That one party today might improve its situation by modifications is no compelling reason for Commission intervention. We believe in the sanctity of contracts.

But that 1982 contract was adopted against a backdrop of requirements, then present and projected, from then existing Southwest service areas, certificated or tacitly entered. Today's decision vastly enlarges Southwest's certificated service area. As to the remaining years on the 1982 agreement, the parties are contractually bound, at least as that agreement applies to the requirements from Southwest service areas that existed until today. In the not too distant future at conclusion of the present agreement, the parties will be free to negotiate anew, although as the ALJ pointed out, Southwest places at risk its PG&E derived core-elect service if Southwest elects to swing.

As to the supply requirements emerging for the substantial Southwest service areas being certificated by today's decision, we believe different circumstances may suggest reasonable interim modifications to the agreement. PG&E raised the specter of customers being able to freely swing between serving utilities.

stated it did not object to the applicant serving those communities.

Since 1905 Pacific Gas and Electric Company (PG&E) has been an operating public utility corporation, existing and organized under the laws of California. It is engaged principally in the business of furnishing electric and gas services in California. In San Bernardino County PG&E presently serves a number of large industrial class users as well as providing service to an unspecified number of residential and commercial customers.

Sources of Supply and Early Marketing Agreements

Following the end of World War II discovery of additional natural gas sources within California fell behind ability to meet increasing demand. The major California gas companies had to augment their sources materially and were forced to seek natural gas supplies out of State. As relevant in this proceeding, both PG&E and SoCalGas took steps to import gas from the Southwest. Both found El Paso Natural Gas Company (El Paso) able and willing to sell them gas to be delivered at the Arizona border. With reference to potential impact in the High Desert area of San Bernardino County, PG&E acted first.

In 1949 PG&E obtained authorization to construct a 34-inch, 506 mile long natural gas transmission pipeline to extend from Topock on the Arizona border, across San Bernardino County passing near Barstow, through Kern County to a point southeast of Bakersfield, and thence generally northwesterly through Kettleman, Panoche, and Hollister to terminate at Milpitas, south of San Francisco.

For its part, SoCalGas and a then affiliate company had jointly constructed a 30-inch pipeline to serve the Los Angeles Metropolitan area with out-of-state gas. It ran from Blythe across Riverside County, and deliveries began in 1947. Later, in the mid-1950's, SoCalGas constructed a second 30-inch pipeline to receive additional El Paso gas at Topock, transporting it across

San Bernardino County through Newberry and Victorville to Palmdale in Kern County, thence to Newhall in Los Angeles County. Soon thereafter, another 30-inch transmission pipeline was authorized from near Needles to receive natural gas from Transwestern Pipeline Company. This line crossed to Newberry. From Newberry a 34-inch transmission line was extended southwestward between the Lucerne and Apple Valleys, past Hesperia and through Cajon Pass to Orange County.

The PG&E transmission line across San Bernardino County passes in close proximity to Barstow and Victorville, both communities then served with liquefied petroleum gas by Southwest. The PG&E line also crossed Southwest's service territory. The residents of Barstow and Victorville wanted to convert from liquefied petroleum gas to natural gas. The adjacent PG&E pipeline offered opportunity for Southwest to tap into a supply source for natural gas.

With these developments the stage was set for the evolution of a natural and mutually beneficial business relationship between the two utilities.

PG&E and Southwest first entered into agreement in 1951 whereby PG&E would sell natural gas from its Topock-Milpitas transmission line to Southwest for resale to Southwest's domestic and commercial customers. The agreement was to extend 10 years. During these early years the two utilities generally cooperated in meeting the developing requirements of the High Desert area of San Bernardino County. Their understanding generally was that Southwest would serve the domestic and commercial needs while PG&E would directly serve the large interruptible industrial customers. In 1952 the initial agreement was amended to relax somewhat the Southwest restriction to domestic and commercial customers. (At that time the Federal Power Commission had jurisdiction over such resales of interstate natural gas. In 1954 the "Henshaw Bill" amended the Natural Gas Act to remove the federal jurisdiction in

situations where the gas is ultimately consumed within the state, and the sale for resale within the state is regulated by the Public Utilities Commission of that state.)

As Southwest's customer base grew new supply agreements with PG&E were reached. In 1955 PG&E agreed to deliver increased volumes for resale, including volumes not to exceed 2 million cu. ft. daily per customers for smaller Southwest interruptible customers. In exchange Southwest agreed not to object to PG&E serving directly all customers whose daily requirements would exceed 2 million cu. ft. While by D.51915 the Commission sanctioned implementation of the agreement, the parties were also put on notice that approval could not and would not limit the Commission in authorization of future service by Southwest if such service was determined to be justified by public convenience and necessity, as provided by law. In 1957 this service division point was increased by joint agreement to 3 million cu. ft. daily. (See D.55552 sanctioning the agreement.)

The 1953 "Conditional" PG&E Service Territory Authorization

It was also in this early period of the Southwest-PG&E relationship that PG&E was authorized to enlarge the capacity of its Topock-Milpitas pipeline. At the same time PG&E was authorized to serve a service area based upon that pipeline. Consonant with the provisions of PG&E's San Bernardino County franchise (Ordinance 714), the Commission granted PG&E a service territory extending across San Bernardino County to be confined within a 20 mile wide strip extending equally to each side of the pipeline. But since this strip would cut across Southwest's certificated area, PG&E was not to serve within Southwest's territory as it was then or might later be defined by the Commission. Pertinent ordering paragraphs of D.49101 in 1953 specifically provided additionally that PG&E:

- "6. Before rendering service to any new customer within the certificated area in San Bernardino County, shall first submit

its 20 mile wide certificated service area PG&E provides domestic and commercial service in the Newberry Springs and Kramer Junction areas.

In the southwest corner of San Bernardino County, SoCalGas tapped from its 30-inch Topock-Palmdale pipeline to construct and run a 4-inch distribution gas line southward, adjacent to and paralleling the County's western border, and today serves 2,300 domestic and commercial customers in Pinon Hills on the desert floor and in Wrightwood further south on the north slope ascending southward into the San Gabriel Mountains. Also within the southern area of the County, in the mountainous area south of Hesperia and north of San Bernardino, SoCalGas serves the Valley of Enchantment-Lake Arrowhead area. And over the San Gabriel Mountains SoCalGas also serves the City of San Bernardino.

The respective service territories that had evolved by the early 1980 period are depicted in Appendix A, Map 1.

End of the Honeymoon Period

Following a new 10-year term exclusive gas supply agreement signed in 1982 between Southwest and PG&E, the longstanding relationship between the two began to breakdown. While not affecting PG&E's existing large industrial customers with requirements in excess of 3 million cu. ft. per day, the agreement opened the way for Southwest thereafter to compete with PG&E for large industrial customers. In addition, sometime in 1984 Southwest realized that it was serving more than 500 residential customers in areas contiguous to but outside the eastern boundaries of its certificated service area. Some of these, north of Yermo and near the Cusenbury Cement Plant were technically within PG&E's certificated service territory, but were being served by Southwest with at least the tacit acquiescence of PG&E. About this same time Southwest learned that PG&E was installing facilities to provide gas service to Solar Energy Generating Station (SEGS) Unit No. 1 near Daggett in what is Southwest certificated service territory.

Consequently, on January 31, 1985 Southwest filed Advice Letter 359 asking to expand its certificated area to include those areas where it was providing service. But the Advice Letter went somewhat beyond that as Appendix A, Map 2 shows, and sought also to embrace areas previously certificated to PG&E (principally along PG&E's Milpitas-Topock pipeline). PG&E protested.

Over succeeding months in 1985 the Commission's Evaluation and Compliance Staff held informal conferences with the two utilities in an attempt to resolve the dispute. During this period Southwest agreed to withdraw Advice Letter 359. By mid-1985 Southwest and PG&E had reached a common understanding of the current status of each's respective rights in existing gas service areas in the rectangular 45 mile by 60 mile area east of the westerly township line of Range 5 West, and north of the southerly township line of Township 2 North. This understanding also specifically listed the "open" or uncertified areas in this 2,700 square mile area of San Bernardino County. The understanding recognized that either utility could serve gas customers in these open areas in accordance with the provisions of PU Code § 1001 and applicable Commission decisions. Separately but concurrently, and in recognition that the services at Daggett were within Southwest's certificated territory, PG&E agreed to transfer to Southwest the SEGS I and SEGS II plants. However, the July understanding was not totally dispositive of all issues between Southwest and PG&E with related gas supply issues remaining unresolved.

Early in 1986 PG&E received service requests from two industrial customers for service within the 20 mile wide service territory certificated to PG&E astride the PG&E Milpitas-Topock pipeline; one in the PG&E territory east of Southwest's territory, and one in the PG&E territory west of Southwest's territory. The eastern customer was All American Pipeline, seeking service at its Cadiz Pumping Station and its Ludlow Heater Station, respectively 55 and 25 inside PG&E's territory (eastward from Southwest's

territory). The western location customer was LUZ Engineering, seeking service at that time for its SEGS units III and IV within PG&E's service territory some 10 miles west of the nearest Southwest territory. At the same time LUZ indicated a general location near the SEGS III and IV locations for its contemplated SEGS units V and VI, also well within PG&E's service territory. Accordingly, on April 18, 1986, in accordance with its interpretation of the requirements placed upon it by Ordering Paragraph 6 of D.49101 that "Before rendering service to any new customer within the certificated area in San Bernardino County, [it] shall first submit the name, location and proposed gas load of such customer to this Commission," PG&E notified the Commission of its intent to serve these customers. But Southwest, having earlier obtained transfer of SEGS units I and II (25 miles to the east at Daggett in Southwest's acknowledged territory) to itself from PG&E, also wanted these SEGS units in the PG&E territory. Therefore Southwest asked the Commission to hold up service authorization to PG&E so as not to prejudice discussions Southwest was having with PG&E to this point. And our Legal Division advised staff that the Ordering Paragraph 6 language of D.49101 required "some discretionary action" by the Commission before PG&E could proceed with service. Staff thereupon suggested that PG&E file an Advice Letter to accommodate the unusual situation.

On October 3, 1986 PG&E filed Advice Letter 1380 G with the stated purpose of updating its San Bernardino County service area map, reflecting no area changes but fully describing the boundaries. In addition, PG&E sought clarification of the language of Ordering Paragraph 6 of D.49101 to indicate that it does not require Commission approval, only notification. PG&E contended that advice letter procedures applied to every new customer in its territory would violate customer confidentiality by making customer-specific information part of the public record. On October 17, 1986 Southwest protested the PG&E Advice Letter,

asserting that some of the area PG&E included in its asserted service area "overlaps" or "should be within" Southwest's certificated service territory.

And on October 16, 1986 Southwest attempted to file what was to become Application (A.) 86-10-042. However, the Commission, not wanting to hold up service to LUZ Engineering or American Pipeline, by Resolution G-2702 issued November 14, 1986 authorized PG&E to temporarily provide service to both pending further determination in A.86-10-042 of which should ultimately provide service on a permanent basis, and postponed determination of the relationship of respective service territories to that same application.

In its October 16, 1986 filing Southwest asserted that it had long been recognized by the Commission as "the gas distribution company in San Bernardino County," and its application showed that Southwest sought a certificate of public convenience and necessity to add substantial areas to its presently certificated service area. It stated that the public interest required it to undertake construction of facilities involving deviations from its filed Rule No. 15 to provide service to contiguous areas, to the proposed new SEGS plants, and for future growth in these extended areas. It further stated that these extensions would require additional taps from both PG&E and SoCalGas pipelines. Making the statement that "Even a small company can be very competitive in serving residential and small commercial customers if it has some industrial or other large customers to consume 'valley' gas and balance its load factor," Southwest went on to propose that PG&E relinquish to Southwest a 25 mile long portion of PG&E's 20 mile wide service territory strip which straddles PG&E's Milpitas-Topock pipeline between the Kern County line and Southwest's presently certificated service territory; the area that includes the sites of the LUZ SEGS units III and IV and the subsequent SEGS units V and VI. It is this PG&E service area that Southwest describes as

having been only "conditionally" certified by D.49101 in 1953 to PG&E.

After Staff review the Commission's Executive Director on January 12, 1987 rejected the Southwest application as filed, stating it was incomplete in that it lacked adequate location and construction details of the proposed infrastructure as well as a Proponent's Environmental Assessment. About the same time Southwest and PG&E agreed to meet with Commission staff to explore the possibility of amicable resolution of the issues involved.

In March 2, 1987, Southwest, substituting a revised Section 6.1 to its earlier filing, refiled A.86-10-042. In the substitution Southwest sought the same extended service area as before but asserted that it will not be necessary to construct or extend pipeline facilities as previously stated to seek its objectives; but rather that it would be able to provide needed service within the provisions of Rules 15 and 16, and that as to the SEGS III and IV units, it proposed to purchase PG&E pipeline facilities to provide the service. Southwest went on to state that should it become necessary to construct or extend pipelines it would at such later time seek appropriate Commission authority to do so. The full extent of Southwest's expansion of service area sought by A.86-10-042, including that proposed to be relinquished to Southwest by PG&E, is depicted in Appendix A, Map 2.

While earlier PG&E had sought and obtained extension of time to file a protest to the Southwest application, that time subsequently had been extended by a December 15, 1986 ruling by Administrative Law Judge (ALJ) Norman R. Johnson until the earlier of (1) mutual resolution by the parties of the issues, or (2) notice of breakdown of settlement discussions. For awhile it appeared that a settlement was possible within a general framework whereby PG&E would yield some of its certificated service area as well as the right to compete in substantial portions of open territory in return for an understanding that the area would be

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served under a team concept with Southwest distributing gas and PG&E wholesaling and transporting the gas. However negotiations broke down when it appeared that while Southwest wanted to be able to compete freely for the six industrial customers on the High Desert that PG&E had been serving pursuant to Commission certification for over thirty years, as well as to substantially expand its service territory, Southwest also wanted to be able to freely swing in its choice of gas service between PG&E and SoCalGas. On June 1, 1987 the Commission was advised of an irreconcilable impasse.

On June 26, 1987 PG&E filed a protest to Southwest's A.86-10-042 which had been accepted for filing following revisions. By its protest PG&E asked for dismissal of the application, contending that the appropriate procedural vehicle was not an application but rather a filing pursuant to General Order 96-A's Part I-E. It further contended that the application should be rejected because Southwest, with regard to areas sought which are presently certificated to PG&E, had failed to show that PG&E's services were in any way inadequate, and with regard to open areas sought by Southwest that PG&E stands ready to provide service as soon as it economically can be provided in these areas. PG&E also asked that its revised service area map (as filed in Advice Letter 1380-G) be accepted; that PG&E be authorized permanently to serve the All American Pipeline and the LUZ Engineering (SEGS III and IV units) presently temporarily served since these installations are all located within PG&E's certificated service area, and asked that the requirement of prior notice imposed on PG&E by D.49101 be removed. In the alternative it requested hearings to determine which utility is best situated to provide gas service in the open territory.

On July 17, 1987 SoCalGas advised the ALJ that it has an interest in Southwest's application and would enter the proceedings. Because of ALJ Johnson's case load, A.86-10-042 on

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September 15, 1987 was transferred to ALJ William R. Stalder. In turn, because of his earlier staff work with the parties seeking a compromise, ALJ Stalder recused himself and on October 28, 1987 the application was assigned to ALJ John B. Weiss.

On August 7, 1987, PG&E filed Advice Letter 1423-G to notify the Commission of its intent to provide natural gas service within its certificated service area to two additional facilities of LUZ Engineering, SEGS units V and VI.

Following a duly noticed prehearing conference on November 23, 1987 in San Francisco, there was an initial exchange of prepared testimony filed December 18, 1987 with filings being made by Southwest, PG&E, and SoCalGas. These were followed by rebuttal prepared testimony filings on January 15, 1988. By a letter dated January 15, 1988 The Division of Ratepayer Advocates (DRA) advised that while it would participate, it had no position to present unless new issues were raised beyond those of the December 18, 1987 filings, or unless gas supply contracts or other gas supply agreements were suggested as the basis for division of the disputed territory. However, DRA subsequently did not participate further.

On January 25 and 26, 1988 in San Francisco, after due notice, there were evidentiary hearings before ALJ Weiss, followed the evening of February 24, 1988 by a public hearing in Phelan, California attended by over 300 persons of whom 23 presented their views.

Evidence of the Parties

Southwest presented its evidence through the testimony and exhibits of John L. Mayo, Senior Vice President/Operations, Derald W. Neagle, Manager of Operations Staff, Edward F. Kulas, Manager of Gas Supply and Production, and Jaime Ramirez of its Rate Department who substituted for Roger C. Montgomery, Manager of the Rate Department. PG&E presented its evidence through testimony and exhibits introduced by Gary Green, Kern Division Marketing

Manager, and Harold O. La Flash, a Supervising Commercial Analyst in the Commercial Department of Marketing and Customer Services. For its part SoCalGas presented its evidence and exhibits through A. E. Russell, Manager of Marketing Staff.

Southwest's amended application seeks, first, a certificate of public convenience and necessity to extend and regularize its certificated service area to include customers it currently serves who are located outside its present authorized area, communities contiguous to or near its present authorized area, SEGS units presently served by PG&E, and future customers who locate elsewhere in the proposed extended area; and secondly, authority to exercise its county wide franchise to serve existing and future customers within the proposed extended service territory. Subsequently Southwest, by its Initial Brief, expanded this to propose that the Commission order PG&E and Southwest to modify their existing gas supply agreement to provide that Southwest may obtain its gas supplies from whomever it chooses, and to propose that the Commission provide that any PG&E customer located within Southwest's present certificated service territory have the option to switch to Southwest.

The Five Expansion Areas Sought By Southwest

Southwest sets forth five geographical areas outside its presently certificated service area where Mayo testified it currently is serving customers (These are identified on Appendix A, Map 2). It proposes that these geographical areas be now certified to it and be added to its existing service territory. In the aggregate these areas are quite substantial and would approximately double Southwest's present service area. It was Mayo's testimony that Southwest views these areas as contiguous distribution areas and to be the result of growth from its current distribution area. Southwest views itself as the only local natural gas utility with the facilities, equipment and personnel necessary to provide those

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In the northern PG&E sector, Area E is crossed by the PG&E Topock-Milpitas and the Kramer-Trona transmission pipelines. Near the waist of the "L" the territory is crossed by SoCalGas' Palmdale Transmission pipeline. The southern leg of the "L" is crossed by SoCalGas' Transwestern transmission pipeline through the Cajon Pass. These latter two are interconnected by a north-south SoCalGas pipeline along the eastern border of the open territory. Southwest has no pipeline facilities in Area E.

There are two sectors of Area E of immediate interest to both Southwest and SoCalGas. Mayo testified that Southwest has plans in hand to serve a newly announced residential development to be styled Las Flores Ranch. It is to consist of one thousand one-acre home sites and lies south of Hesperia in the open territory of Area E. Approximately twenty miles to the northwest in the open territory lie the communities of Phelan and Baldy Mesa. Mayo testified that at times over recent years Southwest has done feasibility studies of these community areas, had received inquiries and some applications for service, but had had to face the reality that the areas were too sparsely populated to make it economically feasible to construct a distribution system to serve them. And Southwest having no supply facilities in the area would have to depend upon SoCalGas for a tap, not only to serve Phelan and Baldy Mesa, but also Las Flores Ranch. Southwest's nearest high pressure source of supply of its own would be near Bear Valley Road and Interstate 15. Kulas testified that Southwest presently has 2 taps to SoCalGas supply pipelines arranged by PG&E, and 2 more are in planning or under construction. Under the PG&E-SoCalGas arrangement Southwest pays a 10 cents IMMBtu exchange charge. Kulas testified further that Southwest has contacted SoCalGas seeking a direct sale and/or transportation arrangement. It would seek a supply source from SoCalGas to serve the Phelan-Baldy Mesa area as well.

Southwest has well equipped service center facilities in Victorville, SoCalGas has the same at Wrightwood and the City of San Bernardino. It is significant in this respect that none of the three doubted the ability of any other to staff up or meet service needs in Area E.

The relative location of Phelan, Baldy Mesa, the School District, and Las Flores Ranch to present utility service areas and pipeline facilities is shown on Appendix A, Map 3.

The Phelan Evening Public Hearing

At the well attended lengthy evening hearing held February 24, 1988 in Phelan, each of the three utilities had knowledgeable staff personnel available to answer floor questions. Since PG&E's facilities were a long way distant from Phelan, making it very unlikely that PG&E would become the serving utility in that particular portion of the open area sought by Southwest, essentially the local preference for service was between Southwest and SoCalGas' proposals.

The local residents who testified, it developed, with some exceptions, were interested not so much in who, but rather in how soon they could obtain natural gas service. Two residents and a mobile home park operator, all located on one road, and a Victorville builder were among the seven expressing interest in service from Southwest. Some of these apparently had been influenced by an article in a local newspaper which purportedly had misstated the terms of such service. Four residents were interested only in getting service and eleven favored keeping the open area open to competition from all utilities.

The Northern "Conditionally" Certified PG&E Sector of Area E

We next turn to the Northern Sector of Area E, the sector "conditionally" certified to PG&E by D.49101 in 1953. This sector, straddling the PG&E Topock-Milpitas pipeline, and containing the Tap for the PG&E Trona pipeline at Kramer Junction, is an area of particular interest to PG&E as well as Southwest. The SEG's III to

experience; that it is an anachronism, and that no other utility in California has such a requirement. He observes that Southwest, today one of the 10 largest gas distribution utilities in the country, is no longer a "Mom and Pop" utility to be sheltered from competition, and asks that PG&E be relieved of the requirement. He testified that acquiring and connecting these SEGS plants required substantial marketing and administrative efforts by PG&E in analyzing and preparing proposals, negotiating terms and conditions, and arranging for permits and land rights for facilities, in addition to constructing the required facilities. He asserts Southwest has no basis or reason on which it can base any so-called "right" to take over these customers or ask that PG&E be decertified. PG&E asserts that it "vigorously contests any notion that it is willing to give up its existing customers," and argues that Southwest has made no allegations whatsoever that PG&E is providing inadequate service in any way in its existing service area or to existing customers. La Flash states that as an economic basis develops to introduce service into this sparsely inhabited area PG&E will serve just as it has those residential and commercial customers already at Kramer's Junction.

PG&E and SoCalGas Counter Proposals for "Open" Territory

Both PG&E and SoCalGas object to Southwest's territorial proposals, testifying that such blanket annexation proposals are anticompetitive; that by attempting to annex all the "open" high desert in this southwestern part of San Bernardino County without knowing when or exactly where future growth will occur, Southwest tries to make sure it will not face any competition for that potential market. Russell testified that since Southwest has no facilities at all in the open territory it seeks, much less any economically close within its presently certified territory, it is in no position to expand into some of the fast growing sectors, much less claim it as Southwest service territory. Indeed, SoCalGas contends that with supply facilities already in place, it,

not Southwest, is best situated to provide service in areas of the open territory such as the Phelan-Baldy Mesa sector of Area E.

The thrust of the testimony offered by both PG&E and SoCalGas was that Southwest's growth in San Bernardino County was not obtained by pre-certification of large chunks of open service territory, but rather had been obtained in the manner which both contend should be applied in the open areas; that is, as people move into the open territory and it becomes economic to serve them, the utility for whom it is most economical should make extensions in the normal course of business, and that the territory thus entered should be annexed to their recorded service territory pursuant to the provisions of General Order 96-A. According to the testimony of La Flash and Russell, there are the procedures under which PG&E and SoCalGas have operated in both Kern and San Luis Obispo Counties for many years with general success. It is further suggested that a half mile band off either side of any line extension would constitute an appropriate service area for annexation. It is the contention of both PG&E and SoCalGas that by this application to annex large chunks of sparsely populated open territory Southwest seeks to achieve administratively what it could not achieve competing in the normal course of business.

However, the evidence with respect to Area A, B, C, and D also points to a conclusion that Southwest has been the only utility providing a de facto presence in those areas as a local gas distribution company providing residential and commercial service. The same cannot be said with respect to Area E.

Modification of the 12/31/82 10-Year PG&E-Southwest Supply Agreement

Kulas testified that the PG&E-Southwest 12/31/82 agreement was a 10 year full requirements contract whereby PG&E supplied gas to Southwest pursuant to PG&E's Rate Schedule G-63. In addition, following the 1985 Commission authorization for transportation of customer-owned gas over a utility's pipeline, Southwest has had a short-term transportation agreement with PG&E

serving, and if Southwest is authorized to take direct service from SoCalGas, it is logical to reduce PG&E's level of service obligation and its obligation to provide Abnormal Peak Day Supply protection. To the extent Southwest prospectively proposes to be free to swing, it must be prepared to proportionately yield guarantees of firm commitment during curtailments and for peak service.

Russell testified that SoCalGas had no position on possible modification of the PG&E-Southwest agreement. However, SoCalGas is opposed to providing gas service to Southwest when the only result would be to give Southwest a competitive advantage in the open service territory. SoCalGas further observes, even if it were authorized to charge Southwest a fee for use of its facilities, SoCalGas' competitive position in acquiring new customers would be reduced; the rate would not necessarily compensate for the business SoCalGas would forgo by being required to allow use of its facilities to compete.

The All American Pipeline Customers

One of the customers currently temporarily supplied by PG&E was All American Pipeline Company. Resolution No. G-2702 left the permanent resolution of who should serve to this proceeding. Located within PG&E's Eastern Sector of the 20 mile strip straddling the Topock-Milpitas pipeline, a sector certificated to PG&E, the customers' facility nearest to Southwest territory is at least 30 miles east of Area A. PG&E asks that its authorization to serve these two facilities be made permanent.

Revision of Historic Service Arrangements

Finally, Mayo testified that Southwest also asks the Commission to provide that any customer historically served by PG&E who is located within Southwest's presently authorized service territory be given the option of switching to Southwest, and offers to compensate PG&E for the depreciated original cost value of such facilities as PG&E may have installed specifically to serve these

customers-to the extent Southwest elects to acquire them. These customers are the Riverside Cement Plant and the Southwestern Portland Cement Plant in Victorville, the Southwestern Portland Cement Plant at Black Mountain Quarry, the Permanente Cement Plant at Cushenbury, and Southern California Edison Company's Cool Water Electric Generating Plant near Yermo. Southwest contends that such Commission action would constitute an appropriate means for redressing PG&E's past practice of reserving large volume industrial loads to itself, incident to establishment of "all requirements" supply agreements with Southwest which lacked equal bargaining power.

PG&E's position is that Southwest casting itself as a powerless victim disregards the facts. PG&E points out that it was the existence of PG&E's transmission lines to serve different industrial customers in the high desert that first enabled Southwest to extend its residential-commercial service, and all of these PG&E served plants were served with Commission authorization to which Southwest could have objected. PG&E further argues that if these PG&E historical customers are to have the option to switch, so should Southwest's historical customers, and let such a "free-for-all" ultimately determine which utility the customers want to be "the" gas distribution company in the high desert. And PG&E would include the SEGS 1 and 2 plants located in areas dually certificated to PG&E and Southwest. PG&E asserts that there has been absolutely no showing that PG&E has been rendering inadequate service to its existing industrial customers, or that another utility could render superior service. See Appendix A, Map 5.

Submission

Following the last hearing, initial concurrent briefs were filed April 15, 1988, followed by final briefs. The matter was submitted for decision May 18, 1988.

can work where the interests of the participating utilities are mutually fostered and benefited, but when those interests turn competitive cooperation ceases. Recent history, as well as the evidence in this proceeding, has shown us that to allow the present state of affairs to continue would only mean the spawning of new controversies and discord--not to the interest of the public. Allocation of specific service territories in some instances can serve to redirect utility efforts to a more constructive objective of public service. The evidence in this proceeding indicates that appropriate factors vary sector by sector. Accordingly, we will address the allocation sector by sector.

Area A: While these 2 townships, very sparsely populated, are part of the area certificated to PG&E by D.49101 in 1953, PG&E has done nothing other than the installation initially of pipeline and related facilities for transmission of out-of-state gas through the area. At least tacitly, if not actively through making taps available, it has been willing over the years to permit Southwest to provide and serve the 58 residential-commercial services that are present north of Yermo. Having allowed Southwest to establish the only de facto local distributor presence in the area, we conclude that the certification should be transferred to Southwest and will grant Southwest's application in this regard.

Area B: These 18 1/2 townships have to date attracted few inhabitants other than in the Bell Mountain and Lucerne Lake areas. Again, although PG&E has installed 2 pipelines crossing much of the area, other than serving Southwest Portland Cement Plant at Black Mountain, there has been no effort on its part to extend service to residential or commercial consumers, leaving Southwest to do it, so that today Southwest serves the 198 customers who do have service. This mostly has been "open" territory. Surrounded on 3 sides by operative Southwest territory, rather than leave the potential for an island development within it, we will certify both the open area and the 4 northern townships

that have been within the PG&E certified strip to Southwest.
(Radisavljevic, D.90262 in A.58345, May 6, 1979.)

Area C: The 2 plus townships included were certificated to PG&E by D.53794 in 1956, in the anticipation that PG&E would serve the Permanente Cement Company plant at Cushenbury and any Permanente employees who, it was expected, might build homes in the vicinity. PG&E is serving the cement plant, but the only 4 services in the area otherwise are to 4 ranches, and Southwest provides that service. Southwest provides the only residential-commercial service around the periphery of Area C, and again, rather than create the potential for a future service island deep in another utility's service territory, we will transfer the service territory to Southwest.

Area D: With no present or potential competition, Southwest already provides service to 710 customers in this township signed area adjacent to Southwest's Big Bear service area facilities. It will be certified to Southwest.

Area E. Southeastern Sector: In the 4 townships that lie to the east of Cajon Pass's Highway 15, Southwest presently serves 164 residential-commercial customers, albeit from a PG&E arranged SoCalGas supply tap to SoCalGas' No. 4000 36-inch pipeline which crosses the western half of the sector. Southwest has also developed an arrangement whereby it will also serve approximately 1,000 customers in the projected Las Flores Ranch development. However, Southwest must either extend its own facilities south from Bear Valley Road on Highway 15 or come to some arrangement with SoCalGas. Negotiations are already underway with Southwest proposing to buy gas direct from SoCalGas, or it is possible the 2 utilities may reach an arrangement whereby SoCalGas would transport Southwest owned gas to the area. Expansion south from Southwest's service area from the Hesperia area is a logical resolution of the service area issue here since the mountains along the southern part of the sector make it a natural boundary.

Southwest, apart from already serving in the sector, and having made a showing as to the need for service, has service facilities at Victorville, and provides a local distributor presence. We will certify this sector of Area E to Southwest.

Area E. Southwestern Sector: In this approximate 4 township sector the interests of Southwest and SoCalGas come into sharp conflict. SoCalGas has gas supply lines in place, straddling the entire area with 2 north-south pipelines, No. 1185 and No. 4-39, admirably suited to eventually loop the area. In addition, SoCalGas already provides service to over 2,300 residential and commercial customers in Wrightwood and Pinon Hills, just over the western boundary of the sector. Both Southwest and SoCalGas have been discussing service to Phelan and Baldy Mesa. Phelan is only 4 miles from Wrightwood; SoCalGas' 1185 pipeline runs down Baldy Mesa Drive. SoCalGas also provided correspondence evidence of advanced negotiations to serve the Snowline School District between Phelan and Baldy Mesa. The people who spoke at the Phelan evening hearing clearly wanted service as soon as possible without preference who was to serve. Service from SoCalGas would be quickly possible since SoCalGas has the supply facilities and is adamantly against being required to make its transmission facilities available to Southwest to enable the latter to compete in what SoCalGas regards as its backyard. SoCalGas cited Pac. Tel. & Tel. Co. v. Eschelman et al. (1913) 166 C 640 as authority for the proposition that to require SoCalGas to make its transmission lines available to Southwest in this matter would be an unconstitutional taking of property because, inter alia, the interconnection requirement was not necessary to provide service to customers, but rather only to give a competing utility an advantage at SoCalGas' expense. The Court, SoCalGas argues, reasoned that to allow competitors to interconnect with another utility's facilities would diminish the value of the facilities because such facilities would be less valuable in acquiring new business even though

dominated by the Shadow Mountains, we have no evidence. Accordingly, we will leave it as "open" territory where any utility that can do so economically, is free to extend service.

The 12/31/82 10-Year PG&E-Southwest Supply Agreement

We leave it to the parties to modify their agreement to remove or modify the "all requirements" provision. La Flash testified that PG&E would do so upon request. But Southwest cannot have its cake and eat it too. If Southwest elects to freely swing between transporters or otherwise bypass PG&E entirely, PG&E will lose the contribution to margin now provided, and modifications must also be made to relieve PG&E of any obligation to provide firm service. As we stated in D.87-09-069, dated May 29, 1987, at page 63:

"Gas which moves in interutility transportation will flow to the utilities themselves and to their wholesale and noncore retail customers."
(Emphasis added.)

The All American Pipeline Customers

Located far eastward from the nearest Southwest territory, the All American Pipeline facilities included in this proceeding will be permanently certificated to PG&E. The requirements of Ordering Paragraph 6 of D.49101 will also be deleted as no longer applicable to the 20 mile wide strip of PG&E certificated territory lying east of Newberry Springs.

The Industrial Customers Historically Served by PG&E within Southwest Territory

These cement plants and the Cool Water Electric Generating plant were all contracted for by PG&E many years ago, and there has been no showing that they are inadequately served. That PG&E "might not miss them" were they transferred to Southwest, and that they would enable Southwest to lower rates, cannot be grounds for transferring PG&E customers to Southwest. Southwest, at the time these connections were made, was in no position to provide service to them, and it acquiesced in their certification

2. In the period 1931-1951, Southwest was a local distributor authorized by this Commission to distribute liquefied petroleum gas to residents of nine townships centered upon Barstow and Victorville in San Bernardino County.

3. After World War II discovery of additional natural gas sources within California fell behind demand, compelling the major gas companies to seek and import supplies from out-of-state.

4. Both PG&E and SoCalGas constructed large size gas transmission pipelines and related facilities to bring out-of-state natural gas to California metropolitan areas.

5. PG&E in the early 1950's, pursuant to Commission authorization, constructed, and subsequently had to expand, a Topock to Milpitas pipeline across San Bernardino County.

6. In 1951 PG&E agreed to wholesale natural gas to Southwest, thereby bringing cheaper energy to the customers of Southwest, enabling Southwest to convert to natural gas and to achieve substantial expansions.

7. By D.49101 in 1953 PG&E was authorized a 20-mile wide strip service territory across San Bernardino County and straddling the Topock-Milpitas pipelines, but PG&E was not to serve within Southwest service territory as then defined, or as might later be awarded and recognized by the Commission. Ordering Paragraph 7 of the Decision provided that PG&E was not to serve any new customers outside the PG&E certified strip territory without further certification by the Commission.

8. To ensure that proposed new gas loads within the PG&E certified strip territory would not overburden or endanger supplies for PG&E's metropolitan areas, Ordering Paragraph 6 was included in D.49101. It required that particulars relative to any proposed additional customers within the PG&E certified strip territory in the County be first submitted to the Commission.

9. Successive exclusive requirement contracts to 1982 between PG&E and Southwest generally provided, inter alia, that

28. In addition, the dispositions set forth in Finding 27 would save the Commission considerable manhours consumed in resolving the constant disputes of the past years over individual certifications.

29. The All American Pipeline customers should remain with PG&E and PG&E should be permanently certified to serve them.

Conclusions of Law

1. The application as to service territory proposals should be granted in part and denied in part, as provided in the following order.

2. Ordering Paragraph 6 of D.49101 should no longer be applicable.

3. The SEGS Plants III-VII, and the All American Pipeline Plants should be permanently certified to PG&E.

4. The large load industrial plants historically served by PG&E and certificated to PG&E, whether located in Southwest's present certificated service territory or in the Area B and C territories to be certified to Southwest, should remain certificated to PG&E.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity to provide natural gas service within Areas A, B, C, D, and the Southeast Sector of Area E (east of Interstate 15) of San Bernardino County, as depicted in Appendix A, Map 6 of the attached Opinion, is granted to Southeast Gas Corporation (Southwest).

2. A certificate of public convenience and necessity to continue to provide natural gas service within the Northwest Sector of Area E of San Bernardino County, as depicted in Appendix A, Map 6 of the attached Opinion, is confirmed to Pacific Gas and Electric Company (PG&E).

3. A certificate of public convenience and necessity to provide natural gas service within the Southwest Sector of Area E of San Bernardino County, as depicted in Appendix A, Map 6 of the attached Opinion, is granted to Southern California Gas Corporation (SoCalGas).

4. After the effective date of this order, Southwest, PG&E, and SoCalGas shall file a service area map of the respective service territory granted each in compliance with General Order Series 96.

5. Ordering Paragraph 6 of Decision 49101 shall no longer be applicable to PG&E.

6. The Solar Energy Generating Station plants Numbers Three through Seven, temporarily certified to PG&E by various resolutions of this Commission, are permanently certified to PG&E.

7. Southwest's request that Riverside Cement Corporation, Southwest Portland Cement Corporation, Southwest Portland Cement Quarry (at Black Mountain), the Kaiser Permanente Cushenbury Cement Plant and the Coolwater Electric Generating Plant, historically supplied by PG&E, be transferred to Southwest is denied.

8. The All American Pipeline Company facilities located in PG&E certificated territory east of Newberry Springs shall be permanently certified to PG&E.

9. PG&E's certificate of public convenience and necessity to continue to offer to provide natural gas service to new customers in Areas A and C of San Bernardino County, as depicted in Appendix A, Map 6 of the attached Opinion is cancelled effective the date of this order, and PG&E is relieved of its public utility obligations as to those areas.

10. The Central Sector of Area E of San Bernardino County as depicted in Appendix A, Map 6 of the attached Opinion shall remain open territory pending further order of this Commission.

11. PG&E having agreed to revision of the full requirements agreement, that issue is moot.