

9/21/98

Decision 98-09-074

September 17, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southwest Gas Corporation to modify the terms and conditions of the Certificate of Public Convenience and Necessity granted in D.95-04-075, to provide natural gas service in areas of El Dorado, Nevada, and Placer Counties, California. (U 905 G)

ORIGINAL

Application 97-07-015
(Filed July 1, 1997)

**ORDER DENYING SOUTHWEST GAS CORPORATION'S
REQUEST FOR A STAY OF DECISION 98-07-031**

On August 12, 1998, Southwest Gas Corporation (Southwest) filed an application for rehearing of Decision (D.) 98-07-031, which dismissed Southwest's application requesting that the Commission modify the terms and conditions of the Certificate of Public Convenience and Necessity (CPCN), previously authorized in D.95-04-075, to expand its services in Northern California, including the Town of Truckee. D.98-07-031 also ordered Southwest to proceed with all deliberate speed to fulfill its obligations as set forth in D.95-04-075 and D.94-12-022. Southwest requests an immediate stay of D.98-07-031, pending rehearing and judicial review by the California Supreme Court. D.98-07-031 was made effective immediately; consequently, Southwest could not take advantage of the automatic stay provision of Public Utilities Code section 1733(a).

Public Utilities Code section 1735 provides that an application for rehearing shall not excuse compliance with any decision, or operate to stay or postpone enforcement of any decision, except as directed by a Commission order.

Therefore, unless the automatic stay provision applies, the Commission may grant a stay of a decision in its discretion.

We have carefully considered the arguments raised in Southwest's petition and are of the opinion that good cause for granting a stay has not been shown. Southwest claims that if a stay is not granted and it is successful in obtaining rehearing, it will suffer irreparable harm as it will have already expended millions of dollars for construction on Phase III of the expansion project. Southwest argues that if it is successful either in rehearing or upon review by the California Supreme Court, it would be unlikely to recoup these costs from its ratepayers. However, Southwest does not explain why it may be practically impossible or legally impermissible for it to recover those costs if the Commission's actions are overturned in whole or in part. Indeed, it appears that if either the Commission or the Court were to overturn D.98-07-031 based on a determination that Southwest should have been allowed to recover more or all of the construction costs, then either the Commission or the Court would have the legal authority to order such cost recovery from the ratepayers.¹ Thus Southwest's allegations of irreparable harm are vague and unsupported. In absence of sufficient showing of irreparable harm, we will not grant a stay.

Southwest further argues that staying D.98-07-031 will not unduly delay the completion of the Expansion Project, as Southwest claims no meaningful construction on Phase III will occur this year due to the Town of Truckee's road repaving schedule and the limited construction season in Truckee. However, we considered these very factors in D.98-07-031 when we ordered Southwest to proceed with the project with all deliberate speed, and continue to so order here.

¹ In its petition for a stay, Southwest requests that we modify D.98-07-031 to provide that, if Southwest is successful on rehearing or appeal, the costs of the construction incurred due to the Commission's failure to stay the decision will be recovered from parties in the respective service territories. It is not necessary to consider this request in light of the Commission's authority to order cost recovery from the ratepayers, as discussed above.

Therefore, **IT IS ORDERED** that:

1. Southwest's request for a stay of Decision 98-07-031 is denied.

This order is effective today.

Dated September 17, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners