

Decision 00-02-016 February 3, 2000

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 Section 1001 of the California Public Utilities Code to extend its service area to provide natural gas service in Placer County, California and into portions of El Dorado and Nevada Counties, California, all of which are located contiguous to Southwest Gas Corporation's existing certificated service area. (U 905 G)

Application 93-12-042
(Filed December 30, 1993)
(Amended May 27, 1994)

In the Matter of the Application of SOUTHWEST GAS CORPORATION for Authority to Change Natural Gas Rates in San Bernardino and Placer Counties, California. (U 905 G)

Application 94-01-021
(Filed January 21, 1994)

O P I N I O N

Summary

The Joint Petition filed by Southwest Gas Corporation (Southwest) and the Town of Truckee (Town) to Modify Decision (D.) 94-12-022 and D.95-04-075 is granted. All parties have consented to the modifications of the Stipulations supporting the Joint Petition proposed herein.

Background

The procedural history leading up to the Joint Petition to Modify D.94-12-022 and D.95-04-075 is lengthy. We incorporate by reference the Statement of Facts submitted to the California Supreme Court in our Answer to

Southwest's Petition for Writ of Review of D.98-07-031.¹ D.98-07-031 denied rehearing on our dismissal of Southwest's Application to Modify D.95-04-075. As the underlying facts of the Joint Petition and the Application to Modify are substantially the same, we quote from our Statement of Facts:

"This case stems from Southwest's attempt to renege on a pair of settlement agreements approved by the Commission in connection with Southwest's plans to expand its service territory in Northern California. In 1993, Southwest filed a Certificate Application to extend its certificated service territory in Northern California in the Lake Tahoe area, to include, among other things, the Town of Truckee. In response to a joint motion by Southwest and the Commission's Office of Ratepayer Advocates (ORA), the issues of rate recovery associated with the proposed expansion area were transferred to Southwest's 1995 General Rate Case (GRC). As part of a settlement agreement in the GRC proceeding, Southwest agreed to a construction cost cap of approximately \$29 million, which included a 10% contingency estimate. (This settlement is referred to as the 'Original Settlement,' and was approved by the Commission in Decision (D.) 94-12-022.) Southwest further agreed that its shareholders would be responsible for any cost in excess of the cost cap. (See D.94-12-022.) As part of the settlement agreement, Southwest was excused from the burden of Commission oversight and reasonableness review of the project. Under the terms of the Original Settlement, approximately \$18 million of the estimated cost would be added to the ratebase with the remaining \$11 million recovered directly from the customers in the expansion area through a facilities surcharge which would be in place for up to 10 years. In a related settlement agreement, the Commission granted Southwest a certificate of public convenience and necessity (CPCN) for the expansion project. (This settlement is referred to as the 'CPCN Settlement' and was approved by the Commission in D.95-04-075.)

¹ The Petition for Writ of Review was denied by the California Supreme Court on June 23, 1999.

That settlement incorporated the rate issues resolved in D.94-12-022, including the construction cost cap and facilities surcharge.

“After Southwest completed two of the three construction phases, and after it had already incurred significant cost overruns on the project, Southwest filed an application on July 1, 1997, requesting modification of the terms and conditions of the CPCN authorized in D.95-04-075. Southwest’s application was based upon the very cost overruns for which Southwest agreed to be at risk. Southwest sought to: (1) increase the previously approved construction cost cap by more than 60%, from \$29,100,000 to \$46,762,533; (2) increase the amount of construction expenditures to be recovered from customers through a facilities surcharge from \$11 million to \$28,720,832; and (3) modify the expansion area so that approximately 1,500 potential natural gas customers will be required to apply for service under Southwest’s Main and Service Rules rather than the offered service as set forth in D.95-04-075. Southwest’s application made no mention of the settlement agreements the utility entered into providing that its shareholders would absorb any cost overruns associated with the expansion project.

“On August 18, 1997, ORA filed a protest to the application requesting that the Commission dismiss the application and direct Southwest to complete the certificated project. After a prehearing conference which established a briefing schedule and date the proceeding would be submitted for decision, the parties requested that the submittal date and briefing schedule be suspended, and on January 15, 1998, a Joint Motion for adoption of Stipulation and Settlement Agreement was filed by Southwest and ORA (ORA-Southwest Settlement). The proposed settlement included a scaled back version of Phase III of the project and continued to propose shifting the major portion of any cost overruns from Southwest’s shareholders to its ratepayers.

“On July 2, 1998, the Commission issued D.98-07-031 which dismissed Southwest’s application and 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. The Commission rejected the ORA-

Southwest Settlement and dismissed Southwest's application as it did not find extraordinary circumstances warranting reopening final Commission decisions that had approved Southwest's prior settlement agreements. The commission also found that Southwest had waived any right to file its application seeking such modifications without the written agreement of all the parties to the previous settlements.

"Southwest subsequently filed an application for rehearing and request for a stay of D.98-07-031. The Commission denied Southwest's stay request in D.98-09-074. On January 21, 1999, the Commission issued D.99-01-033, which denied Southwest's application for rehearing. As a result, Southwest filed the instant petition for writ of review."

In denying the stay request in D.98-09-074,² the Commission reiterated the need for timely completion of the Project in compliance with its prior decisions.

The Commission stated, in part:

"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.*" (Italics added.)

D.98-09-074 denying the stay request was not appealed to the California Supreme Court and became final on September 17, 1998. As of this date, Southwest was now subject to three separate Commission orders to proceed with the Project. Southwest had discontinued work in early 1997 and, irrespective of

² D.98-09-074 was not appealed to the California Supreme Court and became final on September 17, 1998.

A.93-12-042, A.94-01-021 COM/HMD/max

D.98-07-031 and D.98-09-074, did not resume work until June 1999, some 250 days after the denial of its stay request.

In the meantime, Southwest filed a federal lawsuit against Town alleging breach of contract, interference with prospective economic advantage, violations of 42 U.S.C. § 1983, declaratory and injunctive relief. Town vigorously denied liability but ultimately entered into a Settlement Agreement with Southwest to avoid the defense costs of protracted litigation. The Settlement Agreement provides for the dismissal of the federal lawsuit by Southwest if Town actively supports the Joint Petition and the Commission grants the Joint Petition.

Lastly, it appears that Southwest may have been charging unauthorized rates in California since January 1, 1999. D.94-12-022 authorized an extension of Southwest's rate case cycle from three to four years (1995 - 1998). Southwest's request for a further extension of the rate case cycle to include 1999 was denied in D.98-07-031. However, no general rate case (GRC) has been filed to establish rates for 1999 forward.

The Joint Petition

On June 2, 1999, Southwest and Town filed a Joint Petition to Modify Decisions 94-12-022 and 95-04-075. The Joint Petition would modify D. 94-12-022 to:

1. Increase the allowable construction expenditures for the Northern California Expansion Project.
2. Modify the mechanism for recovery of such costs.
3. Extend the general rate case cycle for all of Southwest's California service territories and freeze basic rates at existing levels through at least December 31, 2001.

The Joint Petition also requests that D.95-04-075 be modified so as to alter the timing for construction of the project and to delineate its completion.

Southwest and Town submit that the Joint Petition accomplishes the following goals:

1. It requires Southwest to absorb its fair share of the cost overruns experienced in the initial stages of the project.
2. It requires Southwest to restart construction in 1999 under a guaranteed maximum price contract using bid procedures and results acceptable to the Town.
3. It provides for natural gas services to be offered to all areas of Truckee consistent with the original scope of the project.
4. It results in no increases in rates currently authorized by the Commission.
5. It establishes a prompt and fair method for resolving any future disputes, including appropriate security for performance.³
6. It avoids unproductive litigation, establishes an ongoing working relationship between the Town and Southwest, and obtains natural gas service for the citizens of Truckee at the earliest practicable date at prices competitive to propane.

The costs adopted in D.94-12-022 were to be recovered through rate base additions paid for by all Southwest ratepayers (\$18 million) and a facilities surcharge paid for only by customers served in the Expansion area (\$11 million). The Joint Petition seeks to increase the cost cap established in D.94-12-022 from \$29.1 million to approximately \$54 million (depending on how many customers

³ The Joint Petition cannot preclude the resolution by the Commission of any disputes falling under its jurisdiction.

elect service), an increase of \$24.9 million. Of this amount, Southwest would write off approximately \$10 million in construction costs compared to estimates of total costs, or about 40% of the total cost increases. In return, the facilities surcharge rate of \$.12282 per therm will remain in effect roughly three years longer.

Increased project costs would be recovered through three ratemaking vehicles, rate base additions, a facilities surcharge, and a deferred account. Under the Joint Petition, the amount recoverable through rate base additions would increase to \$21.6 million (an increase of \$3.6 million). The amount recoverable through the facilities surcharge would increase by \$2.8 million to \$13.8 million. The deferred account is a non-interest bearing account where remaining capital costs would be booked for future recovery. At the time of its next general rate case, Southwest will transfer an amount from the deferred account to offset the amount of depreciation taken on plant in service.

The remainder of the work of the project would be divided into two parts. The first part (known as Phase III) is intended to be completed by November 1, 2001, and involves areas of downtown Truckee, Tahoe-Donner, Prosser Lakeview, and Prosser Heights. Work commenced on this Phase in June 1999. Phase IV -- which encompasses Ski Slope Way, Prosser Acreage and Donner Lake -- is intended to commence during the 2002 construction season, pending the timing of certain CalTrans repairs.

The Petitioners identify and explain various factors that contributed to the increases in construction costs through the completion of Phase II and the anticipated costs for the remainder of the project. Petitioners claim that these factors could not have been reasonably anticipated at the time the project was originally planned and approved by the Commission.

The Joint Petition has been accepted and stipulated to in writing by the Office of Ratepayer Advocates, Harper Lake Company and HLC IX (collectively referred to as "SEGS"), PG&E Gas Transmission, Northwest California (formerly Pacific Gas Transmission Company), Tuscarora Gas Transmission Company, and Sierra Pacific Power Company. These parties constitute all of the stipulating parties to D.94-12-042 and D.95-04-075. As discussed above, Southwest and Town have also entered into a corresponding written Settlement Agreement.

Discussion

Absence of Opposition

In D. 98-07-031, the Commission dismissed the Application of Southwest to modify gas service relative to our previous order and to increase rates to its customers in the Truckee area. One reason for our dismissal was Southwest's noncompliance with the procedures set forth in the Stipulations for modification, including the absence of the written consent of each stipulating party or a showing that the Commission had significantly changed its regulations in a way that affected the General Rate Case Stipulation. By contrast, the consent of each stipulating party has been obtained in the Joint Petition. It is therefore unnecessary for Southwest to making a showing that Commission regulations have significantly changed.

Our dismissal of D. 98-07-031 was also strongly influenced by the interests of Town. While not a party, Town residents and officials spoke in opposition to the Southwest Application at Public Participation Hearings and communicated with the Commission by letters, telephone calls and through public appearances at Commission meetings. Unlike the Southwest Application to Modify, there is no opposition to the Joint Petition. No member or official of Town (or anyone else) has expressed opposition to the Joint Petition.

In sum, the Joint Petitioners have settled their differences in a mutually acceptable way which provides for gas service to all potential Truckee customers who want the service, at reasonable rates. Each side has compromised: Southwest has agreed to build out its system to serve all customers and to absorb certain cost overruns, while the Town has agreed to costs higher than those required by the original cost cap.

The Role of the Commission

While the efforts of parties to reach mutual agreement on terms for costs, rate design and dispute resolution are appreciated, we are concerned with the uncertainty surrounding the proposed completion dates. The Settlement Agreement and Southwest's construction schedule attached to the Joint Petition speak in terms of "anticipated" completion dates.

By this Decision, we propose modifications to the underlying Stipulations to clarify our expectations concerning compliance with Commission orders. The Commission will take all necessary steps to ensure compliance with this Decision or, if necessary, our three prior orders. Southwest is placed on notice that these steps include, but are not limited to, seeking injunctive relief, the issuance of a contempt citation and/or an order instituting investigation (OII) to impose monetary penalties. "It is fundamental to the Commission's exercise of its powers and jurisdiction that the agency take reasonable steps to ensure that the utilities comply with its orders and rules." (Application for Authority Under Section 851 for Koch Pipeline Company 1999 Cal. PUC LEXIS 498, *16 [D.99-08-007 at p. 5].)

Proposed Modifications

Because of the Stipulations, we need not now address the issuance of an OII concerning Southwest's construction activities from 1997 - 1999. The



Commission will, however, modify the Stipulations to permit the progress of construction to be monitored through completion. We propose that Southwest file a project status report two months after each construction cycle through project completion. The status report should address the percentage of completion, including delays or disruptions, in accordance with the construction schedule attached to the Joint Petition. (See Attachment A.) The Energy Division will then monitor the construction and advise the Commission of any unaccounted for delays or disruptions.

The Stipulations are also modified to provide that construction shall be commenced by Southwest in the next available construction cycle, and shall be completed with due diligence, by January 1, 2004, time being of the essence.⁴ The Commission acknowledges that a delay in the construction for any cause beyond Southwest's control shall excuse any delayed performance.

Conclusion

The proposed modifications add clarification to the Stipulations supporting the Joint Petition as well as enable the Commission to effectively monitor and ensure timely compliance with its orders. Nevertheless, we acknowledged that the terms of the Stipulations are interdependent and subject to the consent of all parties. Accordingly, the parties were requested to indicate in their comments that the proposed modifications are acceptable.

Comments on Draft Decision

The alternate draft decision of Commissioner Duque in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of

⁴ The date in the proposed draft decision has been corrected to reflect the construction schedule attachment.

the Rules of Practice and Procedure. Joint Comments of the Town and Southwest were filed on January 27, 2000. The Joint Comments express support for the alternate draft decision and state that all parties consent to the proposed modifications. Three minor nonsubstantive changes were also suggested in the Joint Comments and are incorporated at the relevant points in the text herein.

Findings of Fact

1. On July 1, 1997, Southwest Gas Corporation filed A.97-07-015 seeking Commission modification of D.94-12-022 and D.95-04-075.
2. In D.98-07-031, the Commission considered all of the allegations of A.97-07-015, dismissed the application, and 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.
3. On June 2, 1999, Southwest filed a Joint Petition with Town, again seeking Commission modification of D.94-12-022 and D.95-04-075.
4. We have considered all of the allegations of the Joint Petition and find that it constitutes an appropriate settlement of outstanding issues, provided all parties consent to the modifications of the supporting Stipulations addressed herein.
5. All parties have now consented to the proposed modifications.

Conclusions of Law

1. The Joint Petition should be granted, all parties having consented in writing to the proposed modifications addressed herein.
2. The Joint Petition, with the modifications addressed herein, is reasonable in light of the whole record of the case, consistent with the law and in the public interest.

ORDER

IT IS ORDERED that the Joint Petition by Southwest Gas Corporation and the Town of Truckee, California, to Modify Decision (D.) 94-12-022 and D.95-04-075 is granted, all parties having consented to the modifications addressed herein.

This order is effective today.

Dated February 3, 2000, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

I dissent.

/s/ CARL W. WOOD
Commissioner

I dissent.

/s/ LORETTA M. LYNCH
Commissioner

"ATTACHMENT A"

**TRUCKEE EXPANSION PROJECT
PHASE III & IV - PRODUCTION PLAN - SUMMARY**

	<u>Mains</u>	<u>Services</u>
<u>1999</u>		
Portions of Downtown	X	X
Tahoe Donner South	X	X
Portion of Tahoe Donner North	X	X
<u>2000</u>		
Prosser Approach	X	
Remaining Portions of Downtown	X	X
Prosser Lakeview	X	X
Tahoe Donner South		X
Continuation of Tahoe Donner North	X	X
<u>2001</u>		
Prosser Lakeview		X
Prosser Acreage	X	X
Prosser Heights	X	X
Remaining Tahoe Donner North (Snow Delay)	X	X
SkiSlope Way	X	X
<u>2002</u>		
Donner Lake Approach	X	
Prosser Acreage		X
Prosser Heights		X
SkiSlope Way		X
Initial Portion of Donner Lake	X	X
<u>2003</u>		
Initial Portion of Donner Lake		X
Remaining Portion of Donner Lake	X	X