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Decision No. ✓.

ORIGINAL

Decision No. 3292

BEFORE THE RAILROAD COMMISSION OF THE
STATE OF CALIFORNIA

In the matter of the application
of W. F. BOARDMAN and CHAS. F.
LEEGE to construct a pipe line
and for a certificate that pub-
lic convenience and necessity
will require the construction of
the same.

Application

No. 2105.

Sanborn and Roehl, Henry E. Carter and
Chickering and Gregory for Applicants.

Leroy M. Edwards for Southern Counties
Gas Company of California.

Clyde Bishop for City of Newport Beach.

BY THE COMMISSION.

O P I N I O N

This is an application of W. F. BOARDMAN and
CHAS. F. LEEGE for a certificate under the provisions
of Section 50 of the Public Utilities Act that public
convenience and necessity require the construction of
a pipe line for the transmission of natural gas from
a connection with the high-pressure pipe line of the
Southern California Gas Company at or near the inter-

secting corner lines of Sections Nine (9), Ten (10), Fifteen (15) and Sixteen (16), Township Three (3) South, Range Eleven (11) West, S. B. B. & M. and thence in a general southerly direction to an intersection with the transmission pipe line connecting the existing distributing systems of applicants in Huntington Beach and Newport Beach, California.

The history of applicants' predecessor, West Coast Gas Company, a corporation, and a statement of the conditions surrounding applicants' properties at Huntington Beach and Newport Beach, has been fully given in our Opinion and Order this day filed in Application No. 2075 before the Commission.

In response to the petition in that matter, we have this day declared that public convenience and necessity require the construction of a gas transmission main to the city limits of Newport Beach and Huntington Beach, there to be connected with the distributing systems of municipal distribution plants which are to be constructed.

The result of that application will be to throw applicants herein, who are the owners of distributing systems in those cities, into direct competition with municipally owned plants in those places.

Applicants have agreed to serve natural gas to the consumers at Huntington Beach and Newport Beach at One (\$1.) Dollar per thousand cubic feet. It appears from the testimony that it is the plan of applicants herein to purchase the supply of natural gas with

which they seek to serve the municipalities herein referred to at a rate of twenty-four (24¢) cents per thousand cubic feet. In order to transmit it from the place of purchase to the cities of Huntington Beach and Newport Beach, it will be necessary to lay a transmission main a distance of eighteen miles, at a cost of approximately Forty Thousand (\$40,000.) Dollars. The territory along the route of this proposed transmission main is sparsely settled and but a small amount of income can reasonably be expected to be derived from the service thereof.

Unless some circumstance unforeseen arises there will be in the immediate future at the city limits of Newport Beach and Huntington Beach a public utility which is a wholesaler of gas and which is offering gas in wholesale quantities at said city limits at a rate of twenty-nine (29¢) cents per thousand cubic feet.

When we consider the facts hereinabove set forth, namely: the competition with the municipal plant, the low rate promised by applicant, and the small saving to be made by applicant in the price paid by it for gas at the expenditure of so much capital, the project to us seems a doubtful one. While this Commission has said, and does hold as it has held in this situation, that long continuation of poor service will cause this Commission to grant a utility authority to enter into competition with one already in the field, it has never said, nor does it in this

case desire to say, that with the entry of the new utility the existing one shall be forced to abandon its property.

It is extremely doubtful whether the territory served by applicants herein will justify a duplication of facilities. As shown by the decision this day being rendered in Application No. 2075, applicants had such notice of existing conditions as would have put an ordinarily prudent man on inquiry, so that by their failure to act they have brought their competitor upon them. If, in the face of that competition, they desire to expend further sums to prevent the loss of their now existing plant and if, after a careful consideration of all the conditions surrounding them in that field, they desire, upon their own responsibility, to make that expenditure, the Commission will order that they be given the opportunity to do so.

Testimony in this proceeding shows that H. W. Burkhardt has applied for a franchise from Orange County for the right to lay the mains for which the certificate of public convenience and necessity herein is sought. He has agreed that upon the acquisition thereof he will assign the same to applicants. Since the submission of the matter it has been brought to our attention that he has actually acquired that franchise. Without the assignment of it to applicants, and without the declaration of this Commission that public convenience and necessity require the exercise of the rights and privileges granted thereunder, applicants can not exercise any rights in relation to their proposed con-

nection with their distributing system in the above named municipalities.

If Burkhart files an application asking authority to transfer his franchise to applicants, and if applicants file with this Commission a supplementary petition reciting that they have acquired the franchise, the Commission will make its declaration that public convenience and necessity require the exercise by applicants of the franchise and rights and privileges therein contained; provided that applicants file with the Commission the usual stipulation declaring that applicants, their successors or assigns, will never claim before the Railroad Commission or any court or other public body a value for said rights and privileges in excess of the actual cost to H. W. Burkhart of acquiring said rights and privileges.

O R D E R

W. F. BOARDMAN and CHAS. F. LEEGE having applied for a certificate under the provisions of Section 50 of the Public Utilities Act that public convenience and necessity require the construction of a pipe line for the transmission of natural gas from a connection with the high-pressure pipe line of the Southern California Gas Company at or near the intersecting corner lines of Sections Nine (9), Ten (10), Fifteen (15) and Sixteen (16), Township Three (3) South, Range Eleven (11) West, S. B. B. & M. and

thence in a general southerly direction to an intersection with the transmission pipe line connecting the existing distributing systems of applicants in Huntington Beach and Newport Beach, California.

And a public hearing having been held and the Commission being fully apprised in the premises,

The Railroad Commission of California hereby declares that public convenience and necessity require the construction of a pipe line for the transmission of natural gas from a connection with the high-pressure pipe line of the Southern California Gas Company at or near the intersecting corner lines of Sections Nine (9), Ten (10), Fifteen (15), and Sixteen (16), Township Three (3) South, Range Eleven (11) West, S. B. B. & M. and thence in a general southerly direction to an intersection with the transmission pipe line connecting the existing distributing systems of applicants in Huntington Beach and Newport Beach, California.

The rights granted in the foregoing paragraph can not be exercised until applicants have secured a certificate of public convenience and necessity with reference to the franchise referred to in the opinion herein.

Dated at San Francisco, California, this 28th day of April, 1916.

Max Thelen
H. J. Loveland

Franz R. Devlin
Commissioners.