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Decision No. ✓

ORIGINAL

Decision No. 3293

BEFORE THE RAILROAD COMMISSION OF THE
STATE OF CALIFORNIA.

In the matter of the application
of SOUTHERN COUNTIES GAS COMPANY
OF CALIFORNIA for a certificate
that public convenience and ne-
cessity require the exercise of
a right granted to applicant un-
der a franchise.

Application

No. 2075.

Leroy M. Edwards for Applicant.

Chickering and Gregory, Sanborn
& Roehl, and Henry E. Carter for
intervenor - W. F. Boardman and
Charles F. Leege.

BY THE COMMISSION.

O P I N I O N

This is an application by SOUTHERN COUNTIES
GAS COMPANY OF CALIFORNIA, a corporation, for a certi-
ficate under the provisions of Section 50 of the Pub-
lic Utilities Act that public convenience and necessi-
ty require the exercise by said corporation of rights
and privileges under a certain franchise heretofore
granted to C. S. S. Forney (Ordinance No. 84) on May

16, 1911, which said franchise was given by the Board of Supervisors of Orange County, California, to the said Forney to maintain and operate a system of gas pipes in a certain portion of the highways within the County of Orange. Application for such certificate of public convenience and necessity was filed with this Commission on February 3, 1916.

The franchise under which applicant seeks to operate was issued under the Broughton Act and contains a clause providing that all construction work under said franchise must be completed within three years. Different constructions have been placed upon that provision in the Act and the applicant, in order to remove any doubt as to the validity of its right to construct the extension herein referred to, has since the submission of this application applied for a new franchise covering the construction hereinafter mentioned. Upon the obtaining of the franchise sought the Commission will, by a supplemental order, issue a certificate of public convenience and necessity thereon.

Applicant is engaged in the business of manufacturing and distributing gas for heat, light and power purposes in certain of the cities and rural districts in Orange and Los Angeles Counties. The system in Orange County consists of production plants, transmission mains and distributing systems which supply the cities of Whittier, Fullerton, Anaheim, Santa Ana, Orange and other municipalities, also unincorporated

territory. Natural gas of about 1,150 B. T. U. per cubic foot heat content is obtained from the Whittier-Fullerton Oil Fields for the service in this territory. By this application it seeks to extend its transmission mains from its present system at Garden Grove to the city limits of Newport Beach and Huntington Beach, California - there to wholesale natural gas to municipally owned gas distributing systems, for the construction of which systems bonds have been voted but which systems have not as yet been built.

To serve the towns of Huntington Beach and Newport Beach applicant proposes to construct a four-inch high pressure gas transmission main fourteen miles in length from its present system at Garden Grove in a southerly and westerly direction to the limits of Huntington Beach and thence to Newport Beach. It is estimated that the line will cost approximately \$35,000, and the minimum revenue to be obtained therefrom will be in excess of \$10,500. per year.

Within these municipalities West Coast Gas Company has heretofore operated, and its successor is now operating, distributing systems supplying the communities with artificial gas.

At the hearing, held on February 23, 1916, Charles F. Leege and W. F. Boardman filed petitions in intervention, in which they opposed the granting of the certificate of public convenience and necessity and alleged, in substance, that they are the owners of

the gas plants formerly owned and operated by West Coast Gas Company, a corporation, in the municipalities of Huntington Beach and Newport Beach; that they formerly owned certain of the bonds of that company; that they became the owners of such company by virtue of foreclosure proceedings taken against said company for failure to pay the interest due on said bonds; and that the granting of the certificates of public convenience and necessity to applicant herein would result in a duplication of gas distributing facilities in those municipalities, and also in the ultimate destruction of their investment in those cities.

Later the intervenors in this proceeding filed with this Commission an application (No. 2105) for a certificate of public convenience and necessity to permit them to construct a similar pipe line from the connection with the high pressure pipe line of 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., thence in a general southerly direction to a connection with the transmission pipe line connecting the distributing systems of the former West Coast Gas Company at Huntington Beach and Newport Beach, and to serve the intervening territory.

A public hearing was held in relation thereto. In as much as the principal object sought to be attained by both applications is to connect with dis-

tributing mains in the municipalities of Huntington Beach and Newport Beach, it is unnecessary to separately consider the two applications. Therefore, we will consider the situation as a whole and may, in the course of the discussion, refer to testimony brought out at either of the hearings on the applications for a certificate and not confine ourselves to the testimony taken in either particular one.

As has been stated above, there is an existing utility within each of these communities, and in a proceeding of this nature it is pertinent to inquire into the history of that utility, and particularly into the manner in which it has fulfilled its duty to serve the public.

West Coast Gas Company, a corporation, is a consolidation of Home Gas and Electric Company and The West Coast Gas, Light and Fuel Company. Home Gas and Electric Company was, at the time of consolidation, rendering service in Newport Beach and The West Coast Gas, Light and Fuel Company in the vicinity of Bellflower, California. The plan of consolidation and financing by which these properties were merged and a bonded indebtedness created, was examined into and passed upon by this Commission in Application No. 257 (Volume 1, Opinions and Orders of the Railroad Commission of California, page 876).

Through the years of 1914 and 1915 the parties in control of West Coast Gas Company were unable to, or at least did not, pay the interest upon the

bonds as the same became due. Finally, in July 1915, the company defaulted altogether on an installment of the bond interest, and after further delay the bondholders foreclosed upon the property and took possession of the same on January 4, 1916.

In the meantime, the service rendered by West Coast Gas Company to its consumers in Newport Beach and Huntington Beach was intolerable. The condition is described by counsel for intervenors in his brief in the following manner:

"Through inefficient management the business of the company did not prosper and consumers were forced to discontinue gas because of the miserable service."

During the year 1915 numerous complaints were filed with this Commission against the service rendered by that company. In the fall of 1915 the citizens of those communities, unable to tolerate the conditions any longer, instituted proceedings to vote bonds for the construction of municipally owned gas distributing systems. The result of the vote of the people upon the issue of whether or not they would bond their cities to provide adequate service furnishes striking testimony of the frame of mind of the public upon the question of the service to which they had been subjected.

On the 28th day of December, 1915, the City of Newport Beach voted on the question of issuance of bonds with the following result:--

For the bonds	253
Against the bonds	17

At Huntington Beach on the same date the vote was as follows:

For the bonds 243
Against the bonds 19

Thereafter, in response to an invitation to submit proposals for a supply of natural gas, the applicant herein agreed to furnish the cities with an adequate supply of natural gas of 1,000 B. T. U. at the following rates:

29¢ per 1000 cu.ft. for the first 50,000 cu.ft. per day.
24¢ per 1000 cu.ft. for the next 25,000 cu.ft. per day.
22¢ per 1000 cu.ft. for the next 25,000 cu.ft. per day.
20¢ per 1000 cu.ft. for all over 100,000 cu.ft. per day.
Minimum guaranteed to be used 50,000 cu.ft. per day.

Unless there is some justification for a long continuation of the admittedly bad service, under the decisions laid down by the Commission it is our duty to grant applicant's petition. The principles which guide the Commission in a determination of a matter of this kind were enunciated in the case of Pacific Gas and Electric Company v. Great Western Power Company (Volume 1, Opinions and Orders of the Railroad Commission of California, at page 203). The following excerpt from that decision we think applicable here:

"And hence if we should in the very first important contested application for a certificate of public convenience and necessity announce the rule that where the major portion of a territory is served, though inefficiently and at high rates, the result of such application will be merely to put the existing utility upon its good behavior, then we would in effect, be saying to all the offending utilities of this State, if there be any, 'you may

proceed with your present methods until competition knocks at the door of your territory and only then will you be compelled to do justice', and we would be saying to every new public utility 'you will knock in vain at the door of any field now served by a utility'. The result would be that old utilities would keep their territory unspurred by the fear of competition, knowing always that only when it was imminent need they prepare to do justice to their patrons, and the new utilities, having no incentive to apply for permission to go into territory more or less completely, but inefficiently served, would limit themselves to new fields within which they would soon, in turn, assume the same attitude as would be assumed by the old utilities now doing business within the State. Rather, do we announce the rule that only until the time of threatened competition shall the existing utility be allowed to put itself in such a position in reference to its patrons, that this Commission may find that such patrons are adequately served at reasonable rates. By announcing this principle we hope we shall hold out to the existing utilities an incentive which will induce them voluntarily, without burdening this Commission, or other governmental authorities, to accord to the communities of this State those rates and that service to which they are in justice entitled, and to the new utilities we shall likewise hold out the incentive that on the discovery by them of territory which is not accorded reasonable service and just rates, they may have the privilege of entering therein if they are willing to accord fair treatment to such territory."

Counsel for intervenors attempted to justify their position by placing the responsibility upon West Coast Gas Company and pleaded that the bondholders, the intervenors here, should not be held to blame for the derelictions of that company. Testimony was introduced to show that since the taking over of the property by the intervenors, the service rendered by them to consumers of gas in the municipalities had been greatly improved.

We cannot accept the contention of the bondholders as an excuse for the failure of these bondholders to exercise that care and prudence which investors usually maintain to safeguard their investment from loss, whether that loss be through a depreciation of the physical properties, bad management or a loss of income arising from added competition.

Through the years 1914 and 1915 the parties in control of West Coast Gas Company did not pay the interest upon the bonds promptly as it became due. Not until January 4, 1916, was the control of the property taken from their hands. Intervenor testified that throughout this entire period they made no inquiry as to conditions surrounding their investment. Under the terms of the trust deed given to secure the bonds they were entitled to possession without foreclosure whenever there was a failure on the part of West Coast Gas Company to keep the plant and the service in a condition of efficiency.

The two intervenors here were owners of eighty-five per cent. of the total bond issue of \$100,000, and a failure to pay interest on that amount would, it seems to us, suggest an inquiry as to why it was not paid. Such inquiry would have directed their attention to the income of the company, its expenses, the service it was giving, and all those things which are necessarily factors in the production of bond interest.

Wherefore, we are forced to the conclusion that the intervenors here must be charged with a know-

ledge of conditions in the same manner as their debtor, West Coast Gas Company, would be charged with a knowledge of the same conditions if that company and not the intervenors here were objecting to the granting of the petition herein.

A further reason, however, why applicant's petition should be granted, lies, we think, in the fact that the people of two municipalities demand municipally owned gas distributing systems and have the means at hand to procure, at a cheap rate, an adequate supply of natural gas. A denial by this Commission of a consummation of their negotiations to that end would, in effect, put this Commission on record as improperly blocking a municipality in its efforts to acquire and operate its own utilities.

For the reasons hereinabove set forth, in our opinion the application should be granted.

O R D E R

SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, a corporation, having applied for a certificate under the provisions of Section 50 of the Public Utilities Act, that public convenience and necessity require the exercise by said corporation of rights and privileges granted by the Board of Supervisors of Orange County, California, in Ordinance No. 84, adopted on the 16th day of May, 1911;

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

The Railroad Commission of California declares that public convenience and necessity require the laying by Southern Counties Gas Company of California, a corporation, of a four-inch high-pressure gas transmission main from its present system at Garden Grove in a southerly and westerly direction to the city limits of Huntington Beach and thence south to the northerly city limits of Newport Beach, Orange County, California; provided that Southern Counties Gas Company of California shall first have secured from the Railroad Commission a supplemental order reciting:

1. That Southern Counties Gas Company of California, a corporation, has filed with the Railroad Commission of California a stipulation, duly authorized by its board of directors, declaring that Southern Counties Gas Company of California, a corporation, its successors and assigns, will never claim before the Railroad Commission or any court or other public body a value for the franchise to be secured, in excess of the actual cost to Southern Counties Gas Company of California, a corporation, of acquiring such franchise.

2. That Southern Counties Gas Company of California, a corporation, has filed with the Railroad Commission a copy of a duly executed and acknowledged agreement with the cities of Newport Beach and Huntington Beach for the supply to said cities of natural gas of

1,000 B. T. U. per cubic foot heat content at the
prices set forth in the preceeding Opinion.

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

Max Thelen
H. S. Loveland

Frazer R. Deane

Commissioners.