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Decision No. _____.

ORIGINAL

Decision No. 4163

BEFORE THE RAILROAD COMMISSION OF THE

STATE OF CALIFORNIA.

In the matter of the application of TRADERS OIL COMPANY for authority to discontinue service and other relief.	))))	Application No. 2534.

Crail and Crail for applicant.
Henry S. Richmond for City of Coalinga.
G. W. Satchell for Coalinga Gas and Power Company.
John B. Yakey and J. H. Allen for Coalinga Pipe Line Company.

BY THE COMMISSION.

_O_P_I_N_I_O_N_

This is an application of TRADERS OIL COMPANY, a corporation, for an order of this Commission declaring that applicant is not a public utility and in the event that such an order be not made, for an order of this Commission granting the applicant an increase in the rates which it now charges Coalinga

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Pipe Line Company, a corporation, for natural gas obtained by the latter corporation from the applicant's natural gas well near the city of Coalinga.

The matter was heard before Examiner Encell at Los Angeles on September twelfth and twenty-first, 1916. At the hearing it was agreed by counsel representing all the parties in interest that the question as to the public utility nature of applicant should be determined first, and in the event that the Commission found applicant to be a public utility, that a later hearing be held by the Commission in respect to rates.

The affairs of the Traders Oil Company with respect to the supply of natural gas derived from its property near Coalinga was before this Commission in Application No. 2066. At that time the applicant was not represented by counsel and offered no testimony in support of the application other than statements that the gas was more valuable to the Traders Oil Company for fuel purposes than the price they were receiving therefor from Coalinga Pipe Line Company, and that they should therefore be allowed to discontinue the service or raise the rate so that the net return on the gas sales would equal the amount expended by them for fuel oil in the operations in which they desire to substitute the gas for fuel purposes.

At the hearing on that application no evidence was introduced upon which the Commission could

determine the original cost, present value or probable life of the physical property, expence of operation or income, or any other factor upon which the Commission would necessarily have to depend in fixing a reasonable rate. The application was, therefore, dismissed by the Commission without prejudice.

Applicant is the owner of the southeast quarter of the southeast quarter (SE¼ of SE¼) of Section Thirty-five (35), Township Twenty (20) South, Range Fourteen (14) East, M. D. B. & M., in the Coalinga Oil Fields, upon which is located a certain gas well drilled by one B. I. Potter, at that time a lessee of the Traders Oil Company. Under the terms of that lease the lessor was to receive as rental or royalty twenty-five per cent. of all the oil, petroleum, asphalt, natural gas or other hydro-carbon substance produced from the wells bored upon the premises.

For the purpose of disposing of this gas, Mr. Potter organized the Coalinga Pipe Line Company, which was incorporated under the laws of this State on October 27, 1913. On November 6, 1913, the lessees of Traders Oil Company entered into a contract with Coalinga Pipe Line Company, under the terms of which the lessees agreed to sell and the Coalinga Pipe Line Company agreed to buy all the natural gas produced on the tract of land hereinabove described. Thereafter the Coalinga Pipe Line Company constructed a two and one-half (2½) inch pipe line to Coalinga

and upon the completion of this transmission main the pipe line company entered into a contract selling the gas to Coalinga Gas and Power Company, which latter company was and is the owner of the gas distributing mains in the City of Coalinga, which company in turn sold the same to the gas consumers of Coalinga. This supply of natural gas has been used by the people of the City of Coalinga since early in the year 1914. Not only was the seventy-five per cent. of the production which belonged to the lessee sold to the City of Coalinga but the twenty-five per cent. as well which, under the terms of the lease, was the property of Traders Oil Company, has throughout that period been sold to the same community.

Nor was this sale without the knowledge and consent of Traders Oil Company.

There was introduced at the hearing correspondence, the first of which was dated June 11, 1914, and the last of which was dated November 19, 1915, which fully shows that Traders Oil Company was aware of conditions surrounding the sale of this gas supply and received money therefor. On June 11, 1914, Mr. M. V. McQuigg, as president of Traders Oil Company, wrote the Coalinga Gas and Power Company as follows:

> "Also please be advised that 25% of said gas belongs to the Traders Oil Company as royalty, and you are hereby requested to make payment to said company for 25%."

On June 19, 1914, Mr. McQuigg wrote to Coalinga Pipe Line Company to the same effect.

On June 19, 1914, Traders Oil Company again addressed Coalinga Gas and Power Company in part as follows:

> "You as purchasers of that gas, as well as the Coalinga Pipe Line Company, will be held responsible for that portion of said gas representing our royalty, which is 25%."

On August 7, 1914, Coalinga Pipe Line Company remitted to Traders Oil Company the money due that company for its share of the proceeds from the sale of the gas. On August 11, 1914, Traders Oil Company acknowledged receipt of the same. In the months of September, October and November similar transactions took place.

On September 28, 1915, applicant served notice on B. I. Potter that the covenants of the lease entered into by and between himself and applicant had been broken and demanded immediate performance on the said Potter's part of all the obligations, covenants and agreements required of him under the terms of said lease.

The lessees of Traders Oil Company having failed to fulfill the requirements of their lease, Traders Oil Company cancelled the same, took possession of the property and continued to serve Coalinga Pipe Line Company with the full supply of gas which flowed from the well, and on November 4, 1915, Trad-

ers Oil Company notified Coalinga Pipe Line Company of the forfeiture of the lease and stated to that company that "hereafter you will be held directly responsible to this company for all gas taken from said property".

On November 23, 1915, Traders Oil Company notified Coalinga Pipe Line Company that any further payments for gas taken from the property must be made to Traders Oil Company and stated further:

> "We are now cleaning out the oil wells in order to determine whether or not they will produce sufficient oil for fuel at our water plant. If not, it will be necessary for us to use a portion of the gas from the gas well."

On December 15, 1915, Traders Oil Company wrote to Coalinga Gas and Power Company as follows:

> "*****We hereby authorize you to make payment to the COALINGA PIPE LINE COMPANY for all gas received by you prior to November 25th. After that time make no payments except to the Traders Oil Company."

On January 20, 1916, Mr. McQuigg, addressing Coalinga Gas and Power Company, again reiterated his instructions not to pay any money for gas to Coalinga Pipe Line Company and in closing that communication said:

> "In this relation, we are preparing to discontinue the service permanently, for we have a demand and use for this gas ourselves and it is worth so much to our company that you probably cannot afford to pay its equivalent value to this Company."

On January 28, 1916, applicants herein filed with the Commission the application in No. 2066, hereinabove referred to.

From the statements contained in the correspondence hereinabove referred to it will be seen that with the knowledge and consent of applicant herein the gas supply derived from applicant's land was sold to the community of Coalinga from June 11, 1914, to January 28, 1916.

From the eleventh day of June, 1914, to the first of November, 1915, applicant herein was the owner of one-fourth of the supply of gas derived from the well herein referred to and from the first of November, 1915, to the twenty-eighth day of January, 1916 (the date of the filing by applicant of its formal application No. 2066 to discontinue service or increase rates), applicant was the owner of the entire amount of gas flowing from that well.

The position taken by applicant in relation to the foregoing facts is: first, that the applicant is not a public utility and that the gas supply from said well has not been dedicated to the public use; and second, that under the provisions of the lease between applicant and the original lessee, the applicant is entitled and has a right to the supply, which right is prior to the rights of the public or any other party thereto. The provision of the lease upon which applicant depends is as follows:

"The said lessor hereby reserves the right to take delivery of its royalty at its water plant on said property, and it also reserves the right to buy from said lessor any portion or all of said production at the general market price for the operation of its water pumping plant on said premises."

(The word lessor last appearing herein is evidently a typographical error and should read "lessee").

The questions to be decided by the Commission-sion in this case are:

First - Is applicant a public utility?

Second - If so, is it relieved from its public utility functions by the reservation above stated, which is contained in its lease?

The Constitution of this State provides in part, in Section 23, Article XII, as follows:

"Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling, any ***** canal, pipe line, plant or equipment, or any part of such ***** canal, pipe line, plant or equipment within this state ***** for the production, generation, transmission, delivery or furnishing of heat, light, water or power ***** either directly or indirectly to or for the public is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the legislature."

The term "public utility" as defined in the Public Utilities Act, as amended by Chapter 553 of the Laws of 1913 (Statutes 1913, p. 934), reads in part as follows:

"(bb) The term 'public utility', when used in this act, includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger and warehouseman, where the service is performed for or the commodity delivered to the public or any portion thereof. The term 'public or any portion thereof', as herein used means the public generally, or any limited portion of the public including a person, private corporation, municipality or other political subdivision of the state, for which the service is performed or to which the commodity is delivered, and whenever any common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger, or warehouseman performs a service or delivers a commodity to the public or any portion thereof for which any compensation or payment whatsoever is received, such common carrier, pipe line corporation, gas corporation, electrical corporation, water corporation, wharfinger or warehouseman is hereby declared to be a public utility subject to the jurisdiction, control and regulation of the commission and the provisions of this act."

Under the foregoing definitions taken from the constitution and statutes of this state, it seems unnecessary to cite the numerous decisions of the Commission in order to sustain the position that applicant herein is a public utility. Applicant surely cannot contend that it has not indirectly been serving the public or any portion thereof with one-fourth of the gas supply from its well for a period of more than eighteen months, and with the entire supply therefrom for a period of approximately three months before it took any steps to be relieved from any public duty which may have grown out of its conduct as the same

relates to the public. We therefore expressly find that applicant herein is a public utility as the same is defined in Section 2 of the Public Utilities Act. Applicant by its conduct herein in relation to the gas well has become a public service corporation. It has become an agent or an instrumentality for the carrying out of the public's use therein, subject to such regulation as is vested in this Commission under the constitution and statutes of this state.

> "An express contract is not essential to establish reciprocal rights between the public service company and the public it undertakes to serve. Such rights arise by implication of law. If the regulations are in law or in fact illegal for any reason they are not binding and the company has its remedy by appropriate proceedings but the company being engaged in rendering a public service must continue to do so in a reasonably adequate manner until relieved of its duty by due process of law. The service to the public must be performed." (Gainesville v. Gainesville Gas and Electric Company, 62 So. 919).

Nor do we believe that the reservation in the lease will serve to give applicant a right in the gas supply which is prior to the public right therein. For a period of three months it devoted this supply to a public use. The case of Leavitt v. Lassen, 157 Cal. 82, we believe is analogous to the case herein. In the former case a water supply is involved, the original proprietor relying upon a reservation similar to the one herein contained for a free supply of water to his ranch. In that case the court said:

"As the agent of such a public use, he had no power whatsoever to reserve to himself for his private purposes any part of this water. If he could reserve a part, he could reserve all, and thus, by his ipse dixit, convert a public use into private ownership, or, if he could reserve a part for himself, he could with equal authority give away parts of the supply to others, and by this method destroy what the constitution itself has declared shall forever remain a public use. Therefore, the only tenable ground upon which respondent can stand is that, with his appropriation for public use, he became a private appropriator of water for use upon his Buggytown Ranch. If this be so, then his rights to water would be measured as are the rights of every other private appropriator---not by the amount which he took, not by the amount which he claimed, not, as the court decrees, by an amount sufficient thoroughly and properly to irrigate a thousand acres of land; but it would be measured by the amount which he had been actually taking and applying to a beneficial use upon that land. His right to priority in the use of water would also be measured according to these facts and limited to this quantity. (Senior v. Anderson, 115 Cal. 496, (47 Pac. 454); Smith v. Hawkins, 120 Cal. 86, (52 Pac. 139) Strong v. Baldwin, 137 Cal. 440, (70 Pac. 288).**********
If, however, the facts should be that he did not make such private appropriation, his attempted reservation of a private right out of a public trust, as above stated, would be futile and void."

It will be understood, of course, that the present decision deals only with the question of this Commission's jurisdiction.

O R D E R

A public hearing having been held in the above entitled case on the question as to whether the Railroad Commission has jurisdiction over the applicant, and this question now being ready for decision,

The Railroad Commission, on reliance on each statement or finding of fact contained in the opinion which precedes this order, HEREBY FINDS AS A FACT that the natural gas properties of Traders Oil Company, a corporation, situated in the Southeast quarter of the Southeast quarter (SE¼ of SE¼) of Section Thirty-five (35), Township Twenty (20) South, Range Fourteen (14) East M. D. B. & M., is a public utility and subject to the jurisdiction of the Railroad Commission.

Dated at San Francisco, California, this 7th day of March, 1917.

H. D. Loveland

E. Y. Gaston

Frank R. Devlin

Commissioners.