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Decision No. _____

ORIGINAL

Decision No. 4367-

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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VALLEY NATURAL GAS COMPANY,)
)
Complainant,)
)
vs.)
)
MIDWAY GAS COMPANY,)
)
Defendant.)

Case No. 1009.

Joseph Haber, Jr. for Complainant.
O'Melveny, Stevens & Millikin, by
Sayre MacNeil, for Defendant.

DEVLIN, Commissioner.

O P I N I O N .

The issue raised in this proceeding, filed with the Railroad Commission October 9, 1916, which was initiated by the complaint of Valley Natural Gas Company against Midway Gas Company, brings into question the rights of Midway Gas Company to distribute natural gas in Kern County, particularly that portion of the county known as the Midway Oil Fields.

The complaint alleges in effect that Valley Natural Gas Company and its predecessor, California Natural Gas Company, is now and has been since prior to the effective date of the Public Utilities Act engaged in transmitting, distributing and selling natural gas in that portion of Kern County known as the Midway Oil Fields; that defendant, Midway Gas Company, is a corporation engaged in the business of selling natural gas in the town of Glendale, Los Angeles County, and other places south

thereof, and except as to the instance which is made the basis of the complaint, said Midway Gas Company is not engaged in the business of selling gas in Kern County; that the distribution mains of complainant are within approximately one mile of the properties of American Oil Fields Company in Section 36, Township 30, South Range 22 East; that complainant has offered to extend its distribution pipe lines to the said property of American Oil Fields Company and to supply the oil refinery of that company with natural gas at the established rates of complainant applicable to gas supplied by complainant in said Midway Oil Fields; that complainant is informed and believes that within one month past defendant has commenced supplying gas to said American Oil Fields Company at said refinery and that defendant is now supplying and threatens to continue to supply natural gas to said American Oil Fields Company; that defendant has never applied for nor obtained from the Commission a certificate of public convenience and necessity to supply or serve natural gas in the Midway Oil Fields or in any territory supplied with gas by complainant and that defendant has never established nor has it filed with the Commission a schedule of rates for the sale of gas in said territory.

The complaint further alleges that defendant is engaging in the business of selling gas in the Midway Oil Fields is proceeding in violation of the law and that public convenience and necessity do not require that defendant supply gas to said American Oil Fields Company or at all in the Midway Oil Fields.

Complainant asks that the Commission restrain Midway Gas Company from supplying gas to the said American Oil Fields Company or to any person or place in the Midway Oil Fields.

The answer of defendant denies all the material allegations of the complaint and specifically denies that Midway Gas Company

has commenced to supply or has supplied at all, or that it is now serving or threatens to continue to supply gas to American Oil Fields Company.

The facts in the case, as disclosed from the evidence, appear to be as follows:

California Natural Gas Company, the predecessor of Valley Natural Gas Company, complainant herein, was organized in 1910 and commenced supplying natural gas in what is known as the Midway Oil Fields. This was shortly after it was demonstrated that natural gas existed in commercial quantities in Kern County. Theretofore, natural gas had been viewed by the operators of oil properties merely in the light of an additional obstacle in connection with the development of oil wells in this district.

The transmission mains of this company were subsequently extended to Bakersfield, where gas was wholesaled to the local distributing company, and later further extended into the Kern River Oil Fields. Gas was wholesaled to the companies supplying Taft, Maricopa and Fellows.

In May, 1916, the sale of the property of California Natural Gas Company to Valley Natural Gas Company was authorized.

In 1911 the Midway Gas Company was incorporated for the purpose of constructing a transmission main from Midway Field to the city of Los Angeles, which was completed and put in operation in 1913.

On April 25, 1913, this Commission issued an order declaring that public convenience and necessity would require Midway Gas Company "to construct a pipe line from the Midway Gas Fields in Kern County to a point near the city of Los Angeles" and granted permission "to exercise franchises heretofore granted to it by the counties of Kern and Los Angeles *****"

The franchise for Kern County authorizes as follows:

"To lay and construct and for a period of forty years maintain and operate a pipe line system to be composed of not more than three separate lines of pipe for the purpose of carrying therein oil, natural gas or artificial gas along the route and under and along those certain portions of roads and highways within the county of Kern described as follows:" (Here is inserted description of route of said transmission line).

This line has been operated continuously since its completion supplying gas to the metropolitan district surrounding the city of Los Angeles.

In 1916 Midway Gas Company executed a contract with General Pipe Line Company, whereby it agreed to supply the latter with natural gas for its transmission line for use in the pipe line company's oil pumping stations. The oil pipe line follows the same general route as that of the gas transmission mains. Two of these stations are located in the Midway Oil Fields.

California Natural Gas Company wrote the Commission in connection with this service stating that while they believed it constituted an invasion of territory theretofore exclusively supplied by them, they would not oppose it owing to the peculiar conditions under which service was rendered, providing such failure to complain should not be construed as acquiescence in any further service by Midway Gas Company in the Midway Fields.

In August, 1916, the construction of a pipe line was commenced from the main gathering line of Midway Gas Company in Section 20, Township 31 South, Range 23 East, to the refinery of American Oil Fields Company located on Section 36, Township 31 South, Range 22 East, in the Midway Oil Fields, for the purpose of supplying gas to the latter. In order to restrain Midway Gas Company from furnishing gas to American Oil Fields Company, the complaint herein was filed.

It appears that in August, 1916, Midway Gas Company consummated an agreement with E. L. Doheny in accordance with which it would supply gas to American Oil Fields Company sufficient for the latter's requirements, such service, however, to be secondary to that of Midway Gas Company's other consumers and subject to discontinuance, if necessary. It was agreed further that such delivery of gas should terminate December 31, 1916, and as consideration therefor Doheny should later return to Midway Gas Company, as required, an equal amount of gas from his wells on Section 3, Township 31, South Range 22 East.

This proposition was valuable to Midway Gas Company because its normal requirements for the year 1916 were estimated to be less than the combined contractual minima of its several purchasing agreements, hence it could dispose of considerable gas without additional cost. This arrangement from the Midway Company's standpoint provided a means whereby, without cost to it, a large volume of gas could in effect be stored for future use as it might require. The advantage of this contract to Mr. Doheny was that it afforded a medium whereby through this interchange of gas, gas might in effect be transmitted several miles, without cost to him, from his wells to the refinery of American Oil Fields Company, in which he was either interested or under obligation to supply with gas.

Defendant pointed out the saving which would result to it from this arrangement in attempting to justify its action. While such contention might properly deserve consideration in an application for a certificate to supply gas in this territory it is not relevant to the issues of this proceeding -- the legal right of defendant to supply gas in the manner heretofore described without securing such certificate of public convenience and necessity.

It appears further that at the time this contract was executed complainant, Valley Natural Gas Company, although willing to supply this business under its regular rates was unable to do so owing to unexpected reduction in pressure of the wells from which it was drawing, and a largely increased demand on its system due to drilling activity. This shortage of gas available to complainant has existed continuously in varying amounts since prior to August, 1916, and it was the opinion of Mr. J. F. MacMahon, General Manager of Valley Natural Gas Company, that it would continue until the completion of the Standard Oil Company's compressor plant, some time in January, 1917.

Counsel for complainant indicated willingness that this service might continue without further objection providing it should be definitely and finally terminated December 31, 1916. Defendant would not agree to so stipulate, desiring instead to retain the option of continuing the service beyond this date providing it had the legal right to do so. However, Mr. A. B. Macbeth, General Manager of Midway Gas Company, stated that it was defendant's intention to discontinue this service on December 31, 1916.

Defendant contended that it has a legal right to supply this service, basing its argument on the following grounds: First, that the supply of gas to American Oil Fields Company under the conditions heretofore described did not constitute a sale of gas by it but merely represented an interchange of gas between two producers. Second, that defendant has received a franchise from the Supervisors of Kern County to construct and operate a system of gas mains, that pursuant to the provisions of the Public Utilities Act it acquired a certificate of public convenience and necessity to exercise rights granted by said franchise, that a further certificate would be required, according to Section 50 of the Public Utilities Act, only if it should make an extension of its "line, plant or system" and that supplying a consumer who takes

the gas directly from its mains, would not constitute such extension of its system. Third, that at the time this service was commenced and since then continuously and until the hearing of this matter, complainant was without a sufficient supply of gas for its other consumers, and as a result was unable to supply American Oil Fields Company.

I am of the opinion that the position taken by defendant is legally untenable for the following reasons:

Discussing the first point: It was established by the evidence in this case that defendant has had no dealings directly in this matter with the ultimate consumer, American Oil Fields Company; that its only compensation for gas supplied American Oil Fields Company is an equal amount of gas to be delivered in the future by E. L. Doheny, and that E. L. Doheny is selling this gas to American Oil Fields Company. From the foregoing it appears that E. L. Doheny is selling gas in Midway Oil Fields without having obtained a certificate of public convenience and necessity; that defendant is supplying E. L. Doheny with gas for resale, and that neither Doheny nor defendant has a legal right to furnish gas under these conditions. The fact that the consideration for the supply of gas by defendant to Doheny is not money, is not controlling. The effect is the same on both defendant and complainant as though money were actually paid defendant for this gas. Complainant is deprived of this business and defendant eventually is paid in money for an equal amount of gas.

Considering defendant's second point: Neither defendant's franchise in Kern County nor this Commission's decision granting it a certificate of convenience and necessity authorized the defendant to sell or distribute gas in Kern County, but merely to transmit gas from the fields for delivery to Los Angeles, conse-

quently defendant would be required to obtain another certificate before it could so sell or distribute. I am convinced that defendant's interpretation of Section 50 of the Public Utilities Act, by which it assumes that a utility can take on consumers even though they are located within territory exclusively supplied by another utility, providing that in so doing it does not extend its physical plant or system, is not proper. The intention of this provision of the Act is clear - to prevent unregulated extension into territory already served. When defendant was granted the certificate of public convenience and necessity heretofore mentioned, it stated, in compliance with the Commission's requirements, that it would come in competition with no one in the territory for which a certificate was asked. At this time California Natural Gas Company, the predecessor of complainant, was supplying gas in the Midway Fields. Obviously, therefore, Midway Gas Company could not at that time have contemplated service in the Midway Fields. The mere fact that the consumers supply the funds necessary to construct laterals into new territory certainly could not operate to relieve the supplying utility from the obligation of obtaining a certificate of convenience and necessity. I believe that the word "system" as used in Section 50 of the Public Utilities Act has a broader meaning, as used therein, than the construction placed upon it by the defendant. In my opinion it includes the entire service of the utility and all the physical facilities which form the medium for this service, irrespective of the condition that ownership of a portion of the plant may be vested in the consumer. If defendant's position in this matter were correct a utility could evade regulation and by the mere juggling of titles, accomplish indirectly that which is not legally permissible by direct means.

Inadequacy of service on the part of the utility supplying a given field, whether it be temporary or continuing, certainly does not justify another utility in entering that territory without authority from this Commission. Such a condition would be entirely relevant, however, in an application to enter this territory.

I am of the opinion that defendant has not the right to supply gas to American Oil Fields Company in the Midway Fields.

I recommend the following order:

O R D E R .

VALLEY NATURAL GAS COMPANY having heretofore filed its complaint herein alleging that Midway Gas Company had, prior thereto, commenced supplying gas to American Oil Fields Company in territory served by complainant prior to the effective date of the Public Utilities Act, and alleging that defendant, Midway Gas Company, had not previously secured a certificate of public convenience and necessity authorizing it to serve gas in said territory, and defendant having answered complainant's complaint, and thereafter a hearing having been held in the premises, and the matter being submitted and now ready for decision,

And the testimony introduced by the parties at said hearing being as set forth in the opinion preceding this order, and it appearing therefrom that Midway Gas Company has not a legal right to serve gas in Kern County and particularly in the Midway Oil Fields nor a legal right to supply directly or indirectly the American Oil Fields Company and that in so doing it is proceeding in violation of the law,

IT IS HEREBY ORDERED that Midway Gas Company discontinue the supplying of gas to customers in the Midway Oil Fields and particularly to E. L. Doheny and American Oil Fields Company on or before the 15th day of June, 1917.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21 day of June, 1917.

H. D. Howard
Alfred Gordon
Edwin C. England
Frank R. Doherty
Commissioners.