

Decision No. 6025

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA for authority to purchase the properties and franchises of ONTARIO-UPLAND GAS COMPANY and to issue and sell bonds.

Amended Application No. 2972.

In the Matter of the Application of ONTARIO-UPLAND GAS COMPANY for an order authorizing it to sell certain gas plants and franchises to SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA.

Application No. 2973.

Hunsaker, Britt & Edwards by LeRoy M. Edwards, for applicant.

LOVELAND, Commissioner.

O P I N I O N

The above entitled applications have been consolidated for decision.

In amended Application Number 2972, filed December 17, 1918, Southern Counties Gas Company of California asks authority to purchase the gas plants, properties and franchises of Ontario-Upland Gas Company under the terms and conditions of the agreement attached to the petition and marked Exhibit "A"; to exercise, when acquired, all franchises now owned by the Ontario-Upland Gas Company and to issue \$108,000.00, par value of its first mortgage 5-1/2 per cent bonds, payable May 1, 1936, at not less than 82 per cent of their face value, plus accrued interest for the purpose of paying in part for the properties.

In Application Number 2973, Ontario-Upland Gas Company asks authority to sell its properties described in Exhibit "1" attached hereto to Southern Counties Gas Company of California for the sum of \$135,000.00, plus the cost of extensions and betterments installed between July 1, 1917 and September 1, 1917, and a reasonable value for the materials and supplies on hand September 1, 1917.

Ontario-Upland Gas Company was organized in March 1909 with an authorized capital stock of \$100,000.00, divided into 100,000 shares of the par value of \$1.00 each. Stock in the amount of \$88,995.00 is reported outstanding. In addition, the company reports outstanding, \$59,000.00 of bonds.

The record shows that Mr. M. R. Thompson, engineer for Southern Counties Gas Company of California, estimates the reproduction cost new of the Ontario-Upland properties as of April 30, 1917 at \$150,026.59. W. J. Hammond, assistant engineer for the Railroad Commission, in the Commission's Exhibit "1" estimates the reproduction cost new of the Ontario properties as of April 30, 1917 at \$125,656.00, and the reproduction cost new less depreciation at \$113,000.00. W. J. Hammond's estimate of reproduction cost new is \$24,370.59 less than M. R. Thompson's estimate. The difference of \$24,370.59 is accounted for chiefly by the fact that W. J. Hammond used average prices of materials covering a period of five years, whereas M. R. Thompson applied the prices prevailing January 1, 1917, plus the cost of labor as shown by Southern Counties in similar commodities, and taking into consideration the difference in freight rates.

Southern Counties has been operating the Ontario-Upland properties since September 1, 1917, in accordance with the terms of the agreement attached to the amended petition in Application Number 2972, and marked Exhibit "A". The transmission lines of the Southern Counties have been extended and connected with the

Ontario-Upland Gas Company's plant. Instead of selling artificial gas of about 600 heat units, the residents of Ontario and Upland are being furnished with natural gas of 1100 to 1200 heat units. There has been no change in the rates and none is contemplated at this time as a result of the transfer of the properties. From September 1, 1917 to November 30, 1918, the gross earnings of the Ontario-Upland properties are reported at \$54,630.79; the expenses at \$31,720.00, leaving a net income of \$22,860.79. During the same period, Southern Counties has expended the sum of \$8,107.71 for the installation of extensions and improvements to the Ontario-Upland Gas Company's properties, such expenditures having been made pursuant to the agreement under which the properties have been operated by the Southern Counties.

In arriving at the purchase price consideration was given to the present condition of the properties, the reproduction cost, the earnings and the possibility of increasing the business through the introduction of natural gas. The price agreed upon appears to me to be somewhat large. I would not be inclined to look with favor upon the consummation of this transaction if Southern Counties intended to capitalize the entire purchase price or insisted that the Commission, if ever called upon to establish new rates, accept the purchase price as the proper rate base. To pay in part for the properties and to finance in part the cost of extensions and betterments to the properties since September 1, 1917, Southern Counties asks permission to issue \$108,000.00 of bonds. The difference between the purchase price and the proceeds realized from the sale of the \$108,000.00 of bonds, will be paid out of the surplus earnings of Southern Counties. As regards rates, Southern Counties expects a proper return on the reasonable value of the properties.

The \$108,000.00 of bonds referred to, are a part of the \$629,000.00 of bonds which Southern Counties asks permission to issue in Application Number 4270, and the authority to issue

said \$108,000.00 of bonds will be taken care of in the Order in that proceeding.

The properties of Ontario-Upland Gas Company are to be sold and transferred to the Southern Counties free and clear of all encumbrances, indebtedness and liens of every kind and character.

Ontario-Upland Gas Company reports that it is operating under three franchises (a) a constitutional ^{franchise} granted to it under Section 19, Article 11 of the Constitution of the State of California, as the same existed prior to October 10, 1911, in the cities of Ontario and Upland, (b) a franchise, Ordinance Number 120, granted by the town of Ontario, March 2, 1909, (c) a franchise, Ordinance Number 45, granted by the town of Upland, July 7, 1909. The last two franchises were granted to J. R. Anderson and by him assigned to Ontario-Upland Gas Company. Southern Counties Gas Company of California intends to acquire all of these franchises.

The city of Upland asks the Railroad Commission not to authorize the sale of the properties until Ontario-Upland Gas Company has paid the 2 per cent franchise tax. The testimony shows that the city's claim amounts to approximately \$540.00. It further appears that the Ontario-Upland Gas Company has offered to pay the tax under protest and that the city officials refuse to sign a receipt showing the conditions under which payment was offered. It is to be hoped that the city and the company can come to an agreement in regard to the payment of the tax. If they cannot and they conclude to litigate the matter, the amount claimed by the city must be deposited in some bank or trust company, prior to the sale and transfer of the properties, such deposit to be made under escrow agreement satisfactory to both parties. The agreement should provide that if the validity of the 2 per cent franchise tax is up-held, the amount deposited, together with the interest thereon, shall be paid and turned over to the city. If the Court should

rule against the city's claim, the amount deposited shall be delivered to the company or its assigns.

I herewith submit the following form of Order:

O R D E R.

Application having been made to the Railroad Commission for an order authorizing the sale of the properties of the Ontario-Upland Gas Company to Southern California Gas Company of California, a public hearing having been held and the Railroad Commission being of the opinion that these applications should be granted pursuant to the conditions of this Order;

IT IS HEREBY ORDERED that Ontario-Upland Gas Company be, and it is hereby, granted authority to sell and Southern Counties Gas Company of California to purchase all of the gas plants, properties and franchises described in Exhibit "1", attached hereto, said sale and purchase to be made pursuant to the terms of the agreement attached to the supplemental petition in Amended Application Number 2972, and marked Exhibit "A".

The authority herein granted is upon the following conditions:

- 1.-- Before the authority herein granted shall become effective, Ontario-Upland Gas Company shall file with the Railroad Commission a statement showing that the amount which the City of Upland claims to be due under the franchise granted to the company, together with a statement showing that the amount has been paid, or that there has been executed an escrow

agreement showing that the amount claimed by the city has been deposited with some bank or trust company, subject to the condition that if the validity of the franchise tax is upheld, the amount, together with the interest thereon, shall be paid to the city of Upland, or that if the Court decides against the city's claim, the amount deposited, together with the interest thereon, be delivered to the company or its assigns.

2.-- With sixty days after the date hereof, Southern Counties Gas Company of California shall file with the Commission a stipulation duly authorized by its Board of Directors declaring that Southern Counties Gas Company of California, its successors or assigns, will comply with all the terms and conditions of a franchise, Ordinance No. 120, granted by the Town of Ontario, March 2, 1909; a franchise, Ordinance No. 45, granted by the Town of Upland, July 7, 1909, and that it will never claim before the Railroad Commission or any court or other public body a value for the rights and privileges granted in said Ordinances in excess of the amount actually paid to the Town of Ontario and to the Town of Upland as the consideration for the grant of such rights and privileges, which amount shall be set forth in the stipulation, and shall have received a supplemental order from the Railroad Commission declaring that such stipulation, in satisfactory form, has been filed with the Railroad Commission.

3.-The price at which the properties of the Ontario-Upland Gas Company are authorized to be sold and transferred, shall not be binding upon this Commission or any other public body as a measure of value for rate fixing or for any purpose other than the transfer herein authorized.

4.-Within thirty days after the transfer of the properties, Southern Counties Gas Company of California shall submit to the Railroad Commission for approval all of the book-entries relative to the purchase of the properties of Ontario-Upland Gas Company.

5.-Within thirty days after the execution of an instrument of conveyance, transferring the properties herein referred to, a certified copy of said instrument of conveyance shall be filed with the Railroad Commission by Southern Counties Gas Company of California.

6.-The authority herein granted shall apply only to such properties as may be transferred on or before June 30, 1919.

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 26th day of December, 1918.

Edwin O. Edgeston
W. D. Loveland
Wm. Gordon
Frank Wheeler

Commissioners.

EXHIBIT "1"

The property which Ontario-Upland Gas Company proposes to sell to Southern California Gas Company of California is described in Exhibit "B" attached to Application Number 2973, as follows:-

"All those certain lots, pieces and parcels of land situate, lying and being in the town of Ontario, county of San Bernardino and state of California, and particularly described as follows, to-wit:

Lots 1, 2, 3 and 4, in block 134 of the Villa Plats South Side Tract Ontario Colony, as per plat recorded in book 6 of maps, page 11, records of said San Bernardino County.

Also all of the buildings, engines, furnaces, condensers, boilers, generators, shafting, belting, retorts, tanks, compressors, purifiers, pumps, pumping stations, steamholders, gas holders, reservoirs, expansion tanks, gas mains, pipes, tunnels and all other machinery apparatus and fixtures located upon the aforesaid real estate, and all tools used in connection therewith.

Also the entire gas distributing system of pipes, mains and conduits within the streets, alleys and public places, and upon private property within the cities of Ontario and Upland, and in certain unincorporated territory contiguous thereto in the county of San Bernardino, in the state of California, and connected primarily, or at all, with the gas generating and storing plants located upon the real estate hereinbefore described; and all meters, appliances and apparatus connected or used therewith, and all automobiles, horses, wagons and stable equipment, excepting all appliances, meters and supplies carried on and in

connection with said plants or distributing system, and which have not been used in the operation of said plants or distributing system.

Also all easements, rights, powers, privileges, franchises, licenses, rights of way and immunities which first party has to lay, repair, maintain, use and/or operate gas pipes, and/or gas pipe lines and appliances connected therewith, and/or to vend artificial gas within the county of San Bernardino, and within the corporate limits of said cities of Ontario and Upland, whether granted by virtue of the charter of the first party or by the constitution of the state of California, or by legislative act, or by virtue of the acts, resolutions and sessions, ordinances, contracts or grants of said municipalities, or county, or by persons, firms or corporations.

Also the following franchise granted by the trustees of the town of Ontario on the second day of March, 1909, to J. R. Anderson, which said ordinance is entitled as follows:- "An ordinance Granting a Franchise to Lay Gas Pipes on the Streets and Thoroughfares in the Town of Ontario, California, for the Purpose of Carrying and Distributing Gas for Light, Heat and Power unto J. R. Anderson, and being Ordinance No. 190 of the then current series of the Ordinances of said Town of Ontario."

Also the following franchise granted by the trustees of the Town of Upland on the 7th day of July, 1909, to J. R. Anderson, which said ordinance is entitled as follows:-"An Ordinance Granting a Franchise to Lay Pipes on the Streets and Thoroughfares in the Town of Upland, California, for the Purpose of Carrying and Distributing gas for Light, Heat and Power unto J. R. Anderson, and being Ordinance No. 45 of the then current Series of the Ordinance of said town of Upland."