

BEFORE THE RAILROAD COMMISSION  
OF THE STATE OF CALIFORNIA.

---000---

In the Matter of the Application  
of MIDWAY GAS COMPANY for a cer-  
tificate of public convenience and  
necessity and authorization to exer-  
cise rights and privileges under  
franchises heretofore granted to it  
in the Counties of Kern and Los Angeles  
and in the cities of San Fernando and  
Burbank, under Section 50a, b and c of  
the Public Utilities Act.

Application No. 202.

S. M. Haskins for applicant.

ESHLEMAN and EDGERTON, Commissioners.

SUPPLEMENTAL OPINION.

On the 20th day of February, 1913, this Commission denied the above application mainly on the ground that the contractual relations set up between the parties involved in the furnishing of gas through the pipe line leading from the gas fields in Kern County to the City of Los Angeles attempted to remove the parties furnishing the gas from public regulation. There were certain other minor objections, but the principal consideration which moved the Commission to a denial of the application to exercise franchises was this attempt to restrict by contract the power of the State to regulate both the wholesale and retail price of a commodity which is of such general use as to bring the agency supplying such commodity to the public into the class of a public utility.

In the opinion denying the application the Commission uses the following language:

"Believing as we do that this plan may be worked out in such a way that while being fair to the promoters and producers of natural gas it will likewise be fair for the public, and believing likewise that the enterprise in itself, if freed from the objections which we have here set out, may greatly benefit the public, we suggest that the applicant again submit the matter to the Commission formally or in-

Decision No. 602

formally with a view to working out the plan as we believe it should be."

Acting upon this suggestion the representatives of the parties both to this application and those not parties to the application but parties to the contracts which the Commission considered objectionable, held several informal conferences with representatives of the Commission, and the Commission desiring, as always, to promote legitimate enterprise and not impede it, made various suggestions with reference to amendments to the contracts which would obviate the objections theretofore found. In compliance with said suggestions of the Commission, the parties to these contracts have executed the following modifications of their main contract:

Modification of contract for sale of natural gas executed on October 26, 1912, by and between Southern California Gas Company, Los Angeles Gas and Electric Corporation and Midway Gas Company.

WHEREAS, the Railroad Commission of the State of California requires that said contract be modified in certain respects and particularly that it affirmatively appear in said contract that the parties thereto recognize that the contractual relations therein established do not in any wise relieve said parties from any regulation by any public authority:

NOW, THEREFORE, in consideration of the premises said contract is, by mutual consent of all the parties thereto, on this 11th day of April, 1913, modified in the following particulars, to-wit:

FIRST.

By inserting in line 2 of page 56 of said contract after the word "gas" and before the word "is" the following: "for any of the purposes specified in the next preceding paragraph".

SECOND.

By inserting on page 59 of said contract after the sentence ending on line 2 of said page the following:

"Neither by this nor by any other provision of this contract is it attempted to relieve any of the parties hereto from any lawful regulations either of rates or service by any competent authority. The parties hereto have assumed mutual obligations and it is the design of such parties to prevent the impairment, except by mutual consent, of one part of this contract while the other substantial parts stand. In attempting to effectuate such design in this contract, it is rec-

ognized, however, by the parties hereto, that the contractual relations herein established do not in any wise relieve such parties from any regulations by any public authority and it is affirmatively recognized that the same power to regulate the parties hereto exists notwithstanding this contract."

This modification is subject to all definitions and terms of the contract.

IN WITNESS WHEREOF, the Southern California Gas Company, said first party, has caused its corporate name and seal to be hereunto affixed, and this modification of contract to be signed by its First Vice-President, and attested by the signature of its Secretary, thereunto duly authorized so to do by resolution duly adopted by its Board of Directors; and the Los Angeles Gas and Electric Corporation, said second party, has caused its corporate name and seal to be hereunto affixed, and this modification of contract to be signed by its Vice-President, and attested by the signature of its Secretary, thereunto duly authorized so to do by resolution duly adopted by its Board of Directors; and the Midway Gas Company, said third party, has caused its corporate name and seal to be hereunto affixed, and this modification of contract to be signed by its President, and attested by the signature of its Secretary, thereunto duly authorized so to do by resolution duly adopted by its Board of Directors--all as of said day of April, 1913.

Executed in triplicate, and to be attached to the said contract.

Southern California Gas Company,  
By A. N. Kemp  
First Vice-President.

(S E A L )

Attest J. F. Martyn  
Secretary.

LOS ANGELES GAS AND ELECTRIC CORPORATION,  
By Wm. Baurhyte  
Vice-President.

(S E A L )

Attest R. M. Adams  
Secretary.

MIDWAY GAS COMPANY,  
By Jno. Martin  
President.

(S E A L )

Attest Cyrus Peirce  
Secretary.

STATE OF CALIFORNIA, }  
COUNTY OF LOS ANGELES. } SS.

I, J. F. Martyn, Secretary of the SOUTHERN CALIFORNIA GAS COMPANY, a corporation, HEREBY CERTIFY that the foregoing is a full, true and correct copy of a modification of contract for sale of natural gas executed on October 26, 1912, by and between Southern California Gas Company, Los Angeles Gas and Electric Corporation and Midway Gas Company, dated April 11th, 1913.

Dated:  
April 16, 1913.

(S) J. F. Martyn  
Secretary of said SOUTHERN CALIFORNIA  
GAS COMPANY, a Corporation.

(SEAL)

After again carefully going over all of the contracts involved we are of the opinion that these amendments remove all of the objections which the Commission has heretofore urged against these contracts, with one exception, which is, the provision concerning the taking of natural gas from the public lands of the United States. The parties to these contracts who are engaged in the distribution of gas point out quite properly that it is immaterial to them whether they pay the Federal Government or the Southern Pacific Company the agreed price for the natural product, and that this is a matter utterly beyond their control and that after having made large expenditures and having modified the contracts in every other respect within their power to do, in compliance with the Commission's suggestions, it is not fair to them to deny the application because of a circumstance over which they have no control. We have called this aspect of the case to the attention of the Federal Authorities and under all the circumstances we believe that on this ground alone we should not deny the application. The application and the contracts now clearly remove the objection of the Commission concerning the restriction of territory, the restriction of the supply of gas and the reservation of the subject matter of the contracts from control by public authority. Of course, in this application it is not necessary for the Commission to consider the amount of the rate agreed upon in these contracts so long as it is clearly understood that this is a matter which the contracts do not remove from the control of the Commission, or other proper public authority. We have no information as to whether or not the wholesale rate is too high or too low, that being a matter which under a proper proceeding may be as well determined hereafter, under the terms of the present contracts, as though the contracts were not made.

We recommend that the application be granted and submit the following supplemental order:

SUPPLEMENTAL ORDER.

MIDWAY GAS COMPANY, a public utility, having heretofore applied to this Commission for an order that the present and future public convenience and necessity require the construction by it of a pipe line from the Midway gas fields in Kern County to a point near the City of Los Angeles in the County of Los Angeles, and exercise by said applicant of franchise rights heretofore granted by the counties of Kern and Los Angeles and the Cities of San Fernando and Burbank, but which franchises have not heretofore been actually exercised, and a hearing having been held and said application having been on the 20th day of February, 1913, denied, and the applicant and the parties to the contracts fully described in the opinion heretofore rendered on said date, having modified their contracts so as to remove the objections which the Commission set out in its opinion heretofore rendered; and being fully apprised in the premises

IT IS HEREBY ORDERED that the Midway Gas Company be granted a certificate of public convenience and necessity to construct a pipe line from the Midway gas fields in Kern County to a point near the City of Los Angeles in the County of Los Angeles, as more fully described in the application and in the opinion heretofore rendered, and that the said Midway Gas Company be granted permission to exercise franchises heretofore granted to it by the Counties of Kern and Los Angeles and the Cities of San Fernando and Burbank.

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 25<sup>th</sup> day of  
April, 1913.

John M. Eschleman  
W. H. Howard  
W. L. ...  
Erwin C. Engert

Commissioners.