

Decision No. 30441

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SOUTHERN CALIFORNIA GAS COMPANY for
a Certificate that Public Convenience
and Necessity Require the Exercise
of Rights and Privileges granted to
it by Ordinance Number 3370 of the
City of Pasadena.

APPLICATION NO. 21432

WAKEFIELD, COMMISSIONER:

O P I N I O N

SOUTHERN CALIFORNIA GAS COMPANY, a corporation, requests a certificate of public convenience and necessity under Section 50 (b) of the Public Utilities Act authorizing the exercise of the rights and privileges granted to it by Ordinance No. 3370 of the City of Pasadena, a municipal corporation of the State of California, adopted on July 20, 1937, a certified copy of which is attached as Exhibit B to Application. Public hearing was held in Los Angeles on November 5, 1937, and no one appeared protesting the granting of the Application.

It appears from the record and the Application that the Applicant for many years last past, through its predecessors in interest, have been rendering gas service in the City of Pasadena under various claims of right, including a claimed right under a constitutional franchise as set forth in Section 19 of Article XI of the California Constitution and as the same existed prior to October 10, 1911. It further appears that the City of Pasadena has challenged the right of the Applicant and its predecessor in interest, the Los Angeles Gas & Electric Corporation, to use the

streets of the City to distribute gas for any purpose other than for "illuminating light"; that the question of the extent of Applicant's rights under said constitutional franchise was raised in the Superior Court of the State of California (Action No. 373,061) and judgment was entered in said cause on June 10, 1936 in favor of the plaintiff, the City of Pasadena; that an appeal from said judgment and decree was made by Applicant's predecessor, the Los Angeles Gas and Electric Corporation, to the Supreme Court of the State of California and that said appeal was pending and undetermined on August 24, 1937, the date on which application was drawn. Prior to the hearing the franchise involved in this proceeding was adopted, and the judgment rendered by the lower court was satisfied and the appeal dismissed.

It is of record that Applicant applied to the City of Pasadena during the year last past for the franchise granted by Ordinance No. 3370 to remove the uncertainty of this right for the use of the city streets in the service of gas in the City of Pasadena for purposes other than "illuminating light" and that such franchise was granted under above named Ordinance for a term of twenty years, dating from July 20, 1937. Among the more important provisions of said Ordinance No. 3370 Section 20(1) sets forth the annual payment that Applicant Gas Company is required to make to the City, to wit:

(1) A sum equal to two per cent (2%) of the total gross revenue received by the Grantee in the operation of its business of conducting, conveying, transporting, supplying, distributing and selling gas to the City and its inhabitants within the City per calendar year, or fractional calendar year, during the term of this franchise.

Said total gross revenue shall include all gross operating revenue received by the Grantee each calendar year or fractional calendar year, attributable to the area within the City, credited or entitled to be credited

to the following accounts of the Grantee, being the accounts among others required by the Uniform System of Accounts for Gas Corporations prescribed by the Railroad Commission of the State of California effective January 1, 1924, or as thereafter modified or amended:

<u>Account No.</u>	<u>Title of Account</u>
601	Metered Sales to General Consumers
602	Sales to Other Gas Corporations
603	Prepaid Gas
604	Municipal Street Lighting
605	Other Revenue from Sale of Gas

Said total gross revenue shall be less any uncollectible gross operating revenue attributable to the area within the City, credited or entitled to be credited to Account No. 403 entitled "Uncollectible Bills" of the Grantee, being one of the accounts required by said Uniform System of Accounts for Gas Corporations.

Said total gross revenue shall also include any and all gross operating revenue, (less uncollectible bills) attributable to the area within the City, hereafter included in any subdivision of or addition to said accounts, or included in accounts covering gross operating revenues of the same character (less uncollectible bills) established from time to time in lieu of and in addition to said accounts by the said Railroad Commission or other regulatory bodies vested with authority with respect to accounts of gas corporations.

(2) A sum computed at the rate per mile, or any fraction thereof, per calendar year provided for in the following schedule, except as in this subdivision hereinafter provided, for each mile or fraction thereof, of pipe line or main in place, whether in service or not, during said calendar year devoted exclusively to the conducting, conveying and transporting of gas through the City for use outside the City during the term of this franchise:

Nominal diameter of pipe	Rate per mile or fraction thereof per calendar year
2 inches.....	\$ 52.80
3 "	79.20
4 "	105.60
5 "	132.00
6 "	159.40
8 "	211.20
10 "	264.00
12 "	316.80
16 "	422.40
20 "	528.00
24 or more inches.....	633.60

In computing said sum the rate per mile or fraction thereof per calendar year for such pipe line or main in place less than one calendar year, shall be considered a sum of money that bears the same proportion to said calendar year rate as the number of calendar days any such pipe line or main is in place, bears to 365,"

and as further provided under Section 20 of said Ordinance.

It is further of record that it is estimated that the franchise payments on a unit basis such as per active meter under the above named Ordinance of the City of Pasadena will amount to approximately twice what the Applicant is required to pay on the rest of its system and particularly to the City of Los Angeles under the franchise requirement in that city.

Inasmuch as franchise tax payments become part of a utility's operating expenses the same must be provided for through the rates which the consuming public pays for the utility service rendered. If such tax burdens become unequalized as between different service areas, then in the establishment of consumer rates, such tax differentials, along with any other differences that may exist should necessarily be reflected in those rates.

The record further shows that on August 10, 1937, Applicant's Board of Directors adopted a resolution to the effect that neither the Applicant Corporation nor its successors or assigns will ever claim before the Railroad Commission or any other court or public body, a value for the aforesaid franchise in excess of the actual cost thereof, which said actual cost was the sum of One Hundred Dollars (\$100.00).

It appears that this application should be granted, and I recommend the following form of order:

O R D E R

IT IS FOUND AS A FACT that public convenience and necessity require, and Southern California Gas Company is hereby granted a certificate to exercise the rights and privileges granted to it by Ordinance No. 3370 of the City of Pasadena, County of Los Angeles.

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.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 20th day of December, 1937.

Walter M. ...
Leon ...
Frank ...
Ray ...
Ray & ...
Commissioners