

Decision No. 34120

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of

LEONARD P. WIKOFF

for a certificate that public convenience and necessity require or will require the exercise of certain franchise rights and the construction of a plant and system for supplying exchange telephone service and electric energy for the purposes of light, heat and power in the unincorporated town of 29 Palms, and territories adjacent thereto in the County of San Bernardino, California.

Application No. 20642

ORIGINAL

W. R. Williams, for Applicant.

BY THE COMMISSION:

SUPPLEMENTAL OPINION

In the above entitled application Leonard P. Wikoff under date of February 4, 1938, filed a supplemental application requesting the Railroad Commission of the State of California to grant a certificate of public convenience and necessity authorizing applicant to furnish electric energy for light, heat and power in the community of 29 Palms, and to exercise the rights and privileges set forth in Ordinance No. 437 of the County of San Bernardino for the construction, maintenance and operation of facilities to render such electric service.

A public hearing was held before Examiner McCaffrey in 29 Palms on April 7, 1938, at which time evidence was presented and the matter submitted.

On June 27, 1936, applicant filed his original application in the above entitled matter and this Commission issued its order (Decision No. 29212) granting, subject to certain

conditions, a certificate of public convenience and necessity to exercise the rights and privileges authorized under Ordinance No. 437 by the Board of Supervisors of San Bernardino County, State of California.

Since the conditions of the above referred to order were not fully complied with, the certificate of public convenience and necessity became invalid. Subsequently, under Application No. 21060 (Decision No. 29689), the Commission granted Desert Valley Utilities, a corporation, subject to certain conditions, a certificate of public convenience and necessity to exercise the rights and privileges of the aforesaid Ordinance No. 437. Desert Valley Utilities was unable to comply with the conditions set forth in the Commission's order (Decision No. 29689) and therefore said certificate likewise became invalid.

According to the supplemental application, applicant then entered into an agreement with the 29 Palms Mutual Electric Company to lease, operate and maintain a Diesel electric generating plant and distribution facilities for said 29 Palms Mutual Electric Company, which is in operation at the present time. However, it now appears that 29 Palms Mutual Electric Company desires to abandon its status and have the property operated as a public utility. The 29 Palms Mutual Electric Company made an assignment of the aforementioned franchise (Ordinance No. 437) to applicant, conditional to applicant's securing a certificate of public convenience and necessity from the Railroad Commission within one hundred fifty days from April 6, 1938, and further, that applicant, within one hundred eighty days after receiving such certificate, establish service.

It appears that applicant does not own the generating equipment and at the time of hearing presented (Exhibit No. 2) a lease agreement with one Roger Payon for the use thereof. Subsequently, under date of June 3, 1938, applicant through his counsel, W. R. Williams, submitted a new agreement dated June 2, 1938, in lieu of the above mentioned agreement, between himself and Henry F. Kaelin for the lease of certain generating equipment. This agreement, by its terms subject to applicant's receiving the certificate of public convenience and necessity from the Commission and the authorization by the Commission of said agreement, supersedes any and all other contracts or agreements involving the generating equipment as itemized in the agreement.

The term of this agreement is for a period of ten years and it provides that the lessee shall pay, as a rental, not less than seventy-five dollars per month, or twenty-five per cent of the total gross revenue from the sales of electric energy, but not exceeding one hundred fifty dollars per month. It is further provided that the lessee may, after three years from date of contract but prior to six years, purchase said equipment for eighty-five hundred dollars (\$8,500.00); and from said six years and prior to nine years, purchase said equipment for fifty-five hundred dollars (\$5,500.00); and in the last year only of the term of the contract, purchase said equipment for twenty-five hundred dollars (\$2,500.00).

Applicant heretofore, in compliance with Decision No. 29212, submitted a sworn statement dated February 15, 1937, and filed February 23, 1937, setting forth in detail the expense of acquiring the franchise from the County of San Bernardino, Ordinance No. 437, in the amount of \$1,505.00, and stipulated that he, his assigns or heirs will never claim a value in excess of said cost for the value of said franchise.

The proposed public utility would replace the present mutual company now operating in this territory. No one appeared to oppose the granting of the application herein but, to the contrary, witnesses urged that it be granted.

The record shows that while there may be some question as to the feasibility of the enterprise because of the comparatively few customers now to be served and, also, because of certain financial difficulties, it nevertheless discloses there is a definite need for service. The Commission might be more hesitant in granting this certificate if it were not for the fact that electric service is already being rendered, and accordingly, the present users of the service have made certain expenditures for wiring and electrical equipment. It is believed that the applicant operating as a public utility will have greater stability than under the present form of operation and that the customers will receive a cheaper and a higher standard of service.

Under these circumstances, it is the opinion of the Commission that the application should be granted with the limitations specified in the order.

SECOND SUPPLEMENTAL ORDER

Leonard P. Wikoff having made application to the Railroad Commission for a certificate that public convenience and necessity require the exercise by him of certain franchise rights and the furnishing of electric service in the territory of 29 Palms and vicinity, a hearing having been held in the proceeding and the matter having been submitted for decision,

IT IS HEREBY ORDERED that a certificate of public convenience and necessity to exercise the rights and privileges

authorized by the Board of Supervisors of San Bernardino County under Ordinance No. 437, dated August 31, 1936, be and the same is hereby granted to Leonard P. Wikoff, subject to the following conditions and not otherwise:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the date hereof.
2. Applicant shall file within thirty (30) days an original and four copies of rate schedules and rules and regulations satisfactory to the Railroad Commission.
3. The authority herein granted shall apply only within that particular area specified in Ordinance No. 437 of San Bernardino County, as follows:

| | | | | | |
|----------|-----|-------|-------|-------|------|
| Township | One | North | Range | Eight | East |
| " | " | " | " | Nine | " |
| " | " | " | " | Ten | " |
| " | " | South | " | Eight | " |
| " | " | " | " | Nine | " |
| " | " | " | " | Ten | " |

San Bernardino Base and Meridian,

in the community generally known as 29 Palms; provided, however, that the Railroad Commission may hereafter, by appropriate orders, revoke or limit as to territory served by Leonard P. Wikoff, his successors or assigns, the authority herein granted.

4. Applicant shall advise the Commission immediately thereafter the date on which service is commenced and the date on which he has complied with all the requirements of the assignment of the aforementioned franchise.
5. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred or assigned, unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been obtained.
6. The authority herein granted is not to be construed as an approval of the payments made under the lease as to the purchase price of the property in question, nor is such authority to be hereafter urged before this Commission or other public body or court as a measure of the value of said property for any purpose other than here used as incidental to the issue of this certificate.

7. The authorization herein granted shall lapse and become null and void if not exercised within one year from the date hereof.

For all other purposes the effective date of this Order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 25th
day of July, 1938.

William H. Hall

Franklin D. Smith
Karl W. Bohlen
Ray L. Riley

COMMISSIONERS.