

ORIGINAL

Decision No. 34724

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 517 of the City of  
Visalia.

Application No. 22665

Mr. L. T. Rice, for applicant.

BY THE COMMISSION:

O P I N I O N

Southern California Gas Company applies for authority to exercise a franchise granted by the City of Visalia, County of Tulare, covering the use of city streets for the maintenance of gas facilities within said City.

This newly acquired franchise permits the distribution of gas for lighting, heating and power purposes, and is for a term of fifty years. It recites that the amount bid therefor was \$5,000, and the record indicates that the total cost to applicant was \$5,262. An annual fee is payable to the City equivalent to 2 per cent of the gross receipts arising from the use of the franchise.

Applicant has long rendered gas service in and about the City of Visalia. We are of the opinion that the requested certificate should be granted.

O R D E R

A public hearing having been held upon the application of Southern California Gas Company, the matter considered, and it appearing to the Commission and it being found as a fact that public convenience and necessity so require, therefore,

IT IS ORDERED that Southern California Gas Company be and hereby is granted a certificate to exercise the rights and privileges granted by the City of Visalia by Ordinance No. 517, adopted May 20, 1935, subject to the condition, however, that no claim of value for such franchise or the authority herein granted in excess of the actual cost thereof shall ever be made by grantee, its successors, or assigns, before this Commission or before any court or other public body.

The effective date of this Order shall be the twentieth day from and after the date hereof.

Dated, San Francisco, California, this 14<sup>th</sup> day of November, 1941.

[Signature]  
[Signature]  
Justus J. Cushman

Commissioners

DISSENT

We dissent on the grounds specified in our dissent in to-day's Decision No. 34723, in Application No. 23634 (Southern California Edison Company Ltd., electric service in Riverside County), to which reference is made.

In addition we wish to point out that in this application the City of Visalia, in its franchise, Ordinance No. 517, purports to grant to Southern California Gas Company, in Section 3 of said ordinance:

" \* \* \* \* the right to carry, transport, convey, conduct, supply and distribute gas to the City of Visalia and its inhabitants for light, heat and power and to transport gas to other communities and their respective inhabitants outside the City of Visalia and of using the public streets and highways of the City of Visalia in the manner and to the extent necessary to supply with gas the City of Visalia and its inhabitants and other communities and their respective inhabitants for the purposes aforesaid."

The city, we think, has no power to grant such operating and service rights inside or outside of its own boundaries. Such authority rests in this Commission and not in the City of Visalia and the Commission should not certify and authorize such a franchise provision.

The record in this proceeding shows that applicant, in addition to the provision for payment of the specified so-called annual franchise tax, paid to the city the sum of \$5,000 as a lump sum payment for Ordinance No. 517. According to the testimony of applicant's witness Porter "that \$5,000 was in partial compensation for that, that they had been for a term of years without paying the 2 per cent franchise tax" (Tr. p. 7). It appears that the previous franchise, Ordinance No. 159, contained no provision for the payment to the city of a percentage of gross receipts (Tr. p. 4). The application recites, in paragraph IV, that the validity of the previous franchise "had been questioned by reason of certain matters of a technical nature". What these matters were and to what extent they justified the utility's application for a new franchise from the city and for a certificate from this Commission, at a total first cost of \$5,262, was not developed in

this proceeding; nor was an allocation made by the Commission of this expenditure between proper charges to applicant's surplus, capital and operating expenses, notwithstanding recommendations to the Commission to this effect by our departments in charge of these matters. We are of the opinion, therefore, that for these reasons this proceeding should be reopened.

Similar questions were before the Commission in previous proceedings (Applications Nos. 22432, 23583 and 23584). Our dissent in the present case is on grounds substantially similar to those stated by Commissioner Wakefield in his dissent in Decision No. 33902, to which reference is made.



  
Commissioners