

Decision No. 35986

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Southern California Gas Company under
Section 50(b) of the Public Utilities
Act for a Certificate that Public
Convenience and Necessity Require the
Exercise of Rights and Privileges
Granted to it by Ordinance No. 994 of
the City of Redondo Beach.

Application No. 25122

ORIGINAL

T. J. Reynolds and L. T. Rice,
by Neal G. Locke, for Applicant.

BY THE COMMISSION:

O P I N I O N

Southern California Gas Company seeks authority to exercise a franchise granted by the City of Redondo Beach, permitting the maintenance of gas facilities upon the streets of said city.

As the franchise referred to is one granted by the city in accordance with the Franchise Act of 1937, it is provided therein that it shall be for a term of 50 years. A fee is payable annually to the city equivalent to 2 per cent of the gross receipts arising from the use of the franchise, but not less than 1 per cent of all sales of gas by applicant within the city. The direct costs to applicant in obtaining the franchise are stated to have been \$2,598.00.

As this utility has for many years served gas within and about the City of Redondo Beach without competition, it is evident that its request for a certificate to exercise this franchise 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 HEREBY ORDERED that Southern California Gas Company be and hereby is granted a certificate to exercise the rights and privileges granted by the City of Redondo Beach by Ordinance No. 994, adopted May 4, 1942, 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~~ ^{Los Angeles}, California, this 24th day of November, 1942.

Justice F. Casper
Ray H. Riley
M. Baker

Commissioners.

DISSENT IN DECISION NO. 35786, APPLICATION NO. 25122.

GAS FRANCHISE OF SOUTHERN CALIFORNIA GAS COMPANY IN
CITY OF REDONDO BEACH)

We dissent from the majority decision on the grounds stated in our dissent in Decisions No. 35124 and No. 35125 (Pacific Gas and Electric Company, gas and electric service in the City of Bakersfield).

The majority decision in this application brings out very clearly the confusion and uncertainty that inevitably results from the Commission's continued failure to determine its policy with respect to the terms and conditions upon which our certificates of public convenience and necessity should be granted. In this proceeding, as in others, the record shows that, in addition to the actual cost of the acquisition of the franchise granted by the City of Redondo Beach (Ordinance No. 994), applicant paid the City the sum of \$2,500 as "an additional consideration" and over and above the two per cent franchise tax calculated on the gross annual receipts under the so-called Dinuba rule (Tr. 23). The majority opinion says "The direct costs to applicant in obtaining the franchise are stated to have been \$2,598.00." The Order of the majority provides "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." This decision leaves undecided whether the \$2,500 payment is allowed by the Commission as a proper capital or operating expense and whether that particular item may be included by applicant in a "claim of value for such franchise." 1./

1./ This question is squarely presented to the Commission in this proceeding. Applicant's attorney, Mr. Locke, said (Tr. 23):

"To keep the record clear, Mr. Examiner, I would like to make a statement at this time that it is obvious from the testimony of the last witness, and I might state on behalf of the Company, it is the Company's intention and desire to consider this payment of \$2500.00 as a necessary part of the cost of this particular franchise, and therefore covered under the stipulation in question, and also as a part of the capital expenditure on behalf of the Company to which the Company would hereafter be entitled to consideration in its relations with the public and the Commission. I want the record to show that fact."

As a matter of fact, as stated in our dissent in Decision No. 35125, payments of this nature, by this and other utilities, are in every instance, as a result of the Commission's failure to determine the propriety of such payments, included in the utilities' capital accounts and in their claimed rate bases.

While the majority is content to leave this important and constantly recurring matter undecided and in uncertainty, the City of Redondo Beach is not. In its franchise, Ordinance No. 994, Section 6, the City provides:

"Nor shall this franchise ever be given any value before any court or other public authority in any proceeding of any character in excess of the cost to the grantee of the necessary publication and any other sum paid by it to the City therefor at the time of the acquisition thereof. In the event that the property of the grantee, its successors and assigns, located in the City of Redondo Beach shall be taken over by the City by purchase or condemnation this franchise shall have no value."

We have, therefore, the anomalous situation that applicant's rate-payers are expected to have the amount herein in question included as part of applicant's rate base, on which a "fair return" is to be allowed by the Commission, but that when and if the City decides to exercise its power of eminent domain to acquire this property, the amounts paid for this franchise "shall have no value."

This record shows that there are now outstanding and in effect several prior city and county franchises and several Commission certificates of public convenience and necessity, all of which are to be superseded by City Ordinance No. 994 and by a new certificate from this Commission. The record is explicit in this respect. 2./

2./ (Questions by Mr. Locke. Answers by Mr. Cleveland.)

- Q. By granting subsequently of the new franchise, did the Company waive or relinquish the franchise rights theretofore held by it in the City of Redondo Beach? A. Affecting the constitutional franchise?
- Q. Affecting any franchise? A. Yes sir.
- Q. With respect to the constitutional franchise, does the Company waive or relinquish any right it has under the constitutional franchise in the City of Redondo Beach? A. It does.
- Q. It does? A. It does. (Tr. 20)

The City, in Sections 4 and 5 of Ordinance No. 994, makes the surrender and abandonment of all prior outstanding and conflicting franchises a prerequisite to the effectiveness of the new franchise. The majority of the Commission, on the other hand, makes no reference whatever to its outstanding and prior certificates of public convenience and necessity. These certificates apparently remain in full force and effect. Inasmuch as city franchises are confined to the right by applicant of occupancy of city streets and thoroughfares, while the Commission's certificates grant rights and privileges to operate a gas utility and furnish gas service, we think that this decision should be unambiguous and require the cancellation of all outstanding prior operating and service rights and certificates within the franchise territory.

Franck R. Havener

FRANCK R. HAVENER.

Richard Sachse

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C o m m i s s i o n e r s.