

Decision No. 36984

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of }  
 SOUTHERN COUNTIES GAS COMPANY OF }  
 CALIFORNIA, a corporation, for a }  
 Certificate of Public Convenience and }  
 Necessity under Section 50 of the }  
 Public Utilities Act, for Authority }  
 to Exercise the Franchise acquired }  
 from the City of San Luis Obispo by }  
 Ordinance No. 247 (New Series). }

Application No. 25773

**ORIGINAL**

LeRoy M. Edwards, Attorney for Applicant  
 M. A. Fitzgerald, City Attorney of San Luis Obispo

HAVENNER, COMMISSIONER:

O P I N I O N

Southern Counties Gas Company of California asks the Commission to make its order that public convenience and necessity require and will require the exercise by Applicant of the rights and privileges granted to it by the City of San Luis Obispo under Franchise Order No. 247 (N.S.), adopted July 19, 1943. The franchise is granted under the Franchise Act of 1937 for a term of thirty-five years.

The testimony shows that on or about April 12, 1915, the City of San Luis Obispo granted a franchise known as Ordinance No. 43 (N.S.) to Santa Maria Gas and Power Company to furnish and sell to the City of San Luis Obispo and the inhabitants thereof, natural and artificial gas for light, heat, fuel, power and such other purposes as the same can or may be utilized, and for the transportation and delivery of the same, to construct, repair and maintain pipe lines over, across, under and along the public streets, roads and highways of the City of San Luis Obispo.

On or about June 23, 1920, the properties of the Santa Maria Gas and Power Company were sold to Santa Maria Gas Company. Included in such properties was Franchise Order No. 43 (N.S.). This franchise was granted subject to all

provisions of the charter of the City of San Luis Obispo. A charter provision (Section 98) provides that a franchise shall not be leased, assigned or otherwise alienated without the express consent of the city and no dealings with the lessee or assignee on the part of the city to require the performance of any acts or payments of any compensation by the lessee or assignee shall be deemed to operate as such consent. Though the consent of the City of San Luis Obispo was never obtained for the transfer of the franchise, Santa Maria Gas Company apparently proceeded on the theory that it had acquired a valid franchise. In any event, it distributed and sold gas in the City of San Luis Obispo from 1920 to November 1, 1941, when it was merged into Southern Counties Gas Company of California. From 1920 to January 31, 1941, it made annual payments to the City of San Luis Obispo as though it possessed a valid franchise. It is now admitted that the Santa Maria Gas Company had no City of San Luis Obispo franchise.

In 1937, the Santa Maria Gas Company applied for a franchise under the Franchise Act of 1937 but the City Council of the City of San Luis Obispo refused to grant it a franchise. On November 5, 1941, Applicant filed an application for a franchise which it withdrew because the Mayor demanded that Applicant pay a two per cent franchise fee from January 31, 1941. On January 28, 1943, Applicant filed a new application for a franchise. On March 1, 1943, the City Council of the City of San Luis Obispo adopted a resolution, No. 688 (N.S.), submitting to the electors the matter of voting upon the grant of a franchise to Applicant. At the general municipal election held on April 5, 1943, 1,117 votes were cast in favor of granting Applicant a franchise similar to that appearing on the ballot while 347 votes were cast against the granting of the franchise. On July 1, 1943, the City Council of the City of San Luis Obispo adopted said Ordinance No. 247 (N.S.).

The testimony shows that on August 18, 1943, Applicant gave to the City of San Luis Obispo its checks in the following amounts and for the following purposes:

- Exhibit "P" - check for \$5,000 in payment for amount incorporated in franchise ordinance.
- Exhibit "Q" - check for \$2,149.05 in payment of 1% of revenue from November 1, 1941 to December 31, 1942.
- Exhibit "R" - check for \$151.05 to reimburse the city for advertising franchise.
- Exhibit "S" - check for \$1,222.08 for final payment under Ordinance No. 43 (N.S.) for period February 1, 1941 to October 31, 1941.

The last-named check had at the time of the hearing not been cashed by the city. The testimony shows that the amounts represented by Exhibits "Q" and "S" aggregating \$3,371.13 were by Applicant charged to operating expenses. In view of the fact that these payments were for the use of streets prior to 1943, the amount of \$3,371.13 should be charged to Profit and Loss, Account 507, "Delayed Income Debits."

The record shows that the \$5,000 payment was an amount demanded by the City of San Luis Obispo as a consideration for the granting of Franchise Ordinance No. 247 (N.S.). There is nothing in the record to indicate that it was a payment in the way of a settlement for past use of city streets. However, this Commission has authority to direct Applicant to dispose of this payment in its financial records in such a manner that it will not impose an inequitable burden upon ratepayers who reside outside of the City of San Luis Obispo. When the rates of Applicant are reviewed by this Commission at some future date, appropriate consideration will be given to the said \$5,000 franchise payment.

The franchise requires Applicant to pay annually to the City of San Luis Obispo; a sum which shall be equivalent to two per cent of the gross annual receipts of Applicant arising from the use, operation or possession of the franchise, provided, however, that such payment shall in no event be less than one per cent of the gross annual receipts of Applicant derived from the sale of gas within the limits of the City of San Luis Obispo under the franchise. Except for the \$5,000 payment, the franchise contains no unusual provisions.

In Exhibit "K," Applicant stipulates and declares in consideration of the granting to it of the certificate of public convenience and necessity mentioned herein that neither Southern Counties Gas Company of California nor its successors or assigns will ever claim before the Railroad Commission of the State of California or any other court or public body, a value for said franchise in excess of the actual cost thereof which actual cost is reported at \$5,201.05.

No one appeared at the hearing to protest the granting of this application.

The following form of order is recommended.

O R D E R

A public hearing having been held upon the above entitled application, the Commission having considered the evidence submitted at such hearing 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 Counties Gas Company of California be, and it hereby is, granted a certificate of public convenience and necessity to exercise the rights and privileges granted to it by the City of San Luis Obispo by Ordinance No. 247 (M.S.), adopted August 18, 1943, subject to the condition, however, that no claim of value for such franchise or for the authority herein granted in excess of the actual cost thereof shall be made by Southern Counties Gas Company of California, its successors or assigns, before

this Commission or before any court or other public body.

IT IS HEREBY FURTHER ORDERED that within sixty (60) days after the date hereof, Southern Counties Gas Company of California shall file with the Railroad Commission a copy of the journal entries showing that it has charged to Profit and Loss, Account No. 507, "Delayed Income Debits," the said \$3,371.13 heretofore paid to the City of San Luis Obispo for the use of city streets prior to January 1, 1943.

IT IS HEREBY FURTHER ORDERED that the authority herein granted shall become effective twenty (20) days after the date hereof.

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 <sup>Los Angeles</sup> ~~San Francisco~~, California, this 11<sup>th</sup> day of

April, 1944.

Richard Lachse  
Justin F. Calmes  
Francis D. Havens  
Ernest W. Dean  
Russ Powell  
Commissioners