

Decision No. 41619

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of SOUTHERN CALIFORNIA GAS COMPANY, a corporation, under Section 50(a) of the Public Utilities Act of the State of California, for a certificate that public convenience and necessity require the construction of certain pipeline extensions; and, under Section 50(b) of the Public Utilities Act of the State of California, for a certificate that public convenience and necessity require the exercise of the rights granted by Ordinance No. 21 of the City of Coachella.

Application No. 28711

In the Matter of the Application of the INDIO GAS CO., a corporation, for a preliminary Order to exercise the right and privilege under a contemplated Franchise pursuant to Section 50(c) of the Public Utilities Act.

Application No. 28816

T. J. Reynolds, L. T. Rice and Milford Springer,
by Milford Springer, for Applicant.
Earl Redwine and H. L. Thompson, for Indio Gas
Company.

O P I N I O N

In Application No. 28816 Indio Gas Company, hereinafter sometimes referred to as Indio, asked for an order preliminary to the granting of a certificate of public convenience and necessity to exercise a franchise which it contemplated obtaining from the County of Riverside, permitting the installation and maintenance of gas facilities upon the roads and highways of a limited portion of said county surrounding the City of Indio.

In Application No. 28711 Southern California Gas Company, hereinafter sometimes referred to as Southern Cal, had previously asked, among other things, for

a certificate of public convenience and necessity to build a six-inch pipe line from a point on the Texas Pipeline immediately north of the City of Indio to a point in its existing distribution system in Palm Springs to augment the gas supply of that city and to introduce gas service into presently unserved communities, particularly the City of Coachella, from which a franchise had been obtained.

At the original hearing on the latter application, Indio, by written answer and oral testimony sought to prevent Southern Cal from connecting any customers to said pipe line where said pipe line traversed unincorporated territory claimed by Indio as its service area by right of prior entry into and the establishment of service therein.

Indio possesses a certificate (Decision No. 25207 and Supplementary Decision No. 25753) to supply liquefied petroleum gas within the City of Indio under a franchise granted by the city to its predecessor, Charles E. McCartney, but possesses no franchise nor certificate to operate outside the city. It has, however, as time went on, extended certain of its mains westward and southward beyond the city limits and is now serving approximately 120 customers in unincorporated territory. It stated that, when thus extending its service beyond the city limits, it was unaware that a county franchise was necessary and that it would proceed immediately to obtain one. Application No. 28816 results from this expressed intention.

Southern Cal possesses a certificate (Decision No. 34844) to exercise a general franchise granted by the County of Riverside subject to the restriction that said franchise shall not, without further certificate from this Commission first obtained, be used in parts of the county then being served by another utility.

A certificate to build the proposed pipe line was granted by Decision No. 40880 subject to the condition that Southern Cal should connect no customers thereto in the vicinity of the City of Indio until the question of service areas had been settled after further hearing on Application No. 28711 in connection with the hearing on Application No. 28816.

A hearing in which these applications were consolidated for receiving evidence was conducted by Examiner Daly. At this hearing Indio filed as Exhibit 1 a

copy of a franchise granted during the interim by the County of Riverside and requested that its application be deemed appropriately amended. This franchise conforms to the provisions of the Broughton Act and its term is fifty years. Payments thereunder equivalent to two per cent of the gross annual receipts of the grantee arising from the use, operation, or possession of said franchise are due the county annually, excluding the first five years following the date of its granting. The area embraced in this franchise is an approximate five-mile square, described by metes and bounds, surrounding the City of Indio. It is identical with the area claimed by Indio as its service area and from which it seeks to exclude Southern Cal as a serving utility.

At this hearing Indio reasserted its position that it was entitled to serve the area, and expressed its willingness and readiness to extend service to applicants therein in accordance with its filed rule governing extensions. It discussed the amount of pipe and related materials on hand and the assurances it had received concerning future deliveries. It also stated that negotiations were in progress whereby it would purchase from Southern Cal natural gas to distribute to its customers in lieu of liquefied petroleum gas. Southern Cal confirmed this statement. The service by Indio of natural gas having a lower heating value than that of the gas now being served may require changes of a substantial nature in its distribution facilities. Indio recognizes this possibility and states that it is financially able to meet the costs of adapting its system to the distribution of natural gas as well as the costs arising from the contemplated expansion of its operations.

Southern Cal has thus far made no extension of its distribution system eastward beyond the town of Palm Springs. Between Palm Springs and the City of Indio, some 20 miles to the southeast, lies an unincorporated zone entirely unserved except in the extreme east, where Indio has extended some of its mains beyond the city limits, as previously stated. The course of the major portion of the proposed line will follow the county road connecting these towns, thereby making natural gas available to a number of communities and developments along the way.

A small portion, however, will pass to the west of the City of Indio, following a north and south line originally intended to parallel the city's irregular western boundary at varying distances of a few hundred feet, as shown on a map introduced as Exhibit 12 at the original hearing on Application No. 28711. If so routed, it will pass through the unincorporated area in which Indio is now serving approximately 75 consumers and, when the pipe line is installed, Southern Cal will be in a position to distribute natural gas in competition with Indio in an area in which the latter utility has pioneered. Such a possibility prompted the restriction imposed upon Southern Cal in Decision No. 40880. Southern Cal denied the charge that this portion of the course was selected to facilitate such competition, and alleged that its selection was based primarily upon engineering and cost considerations. It stated, however, that in choosing the course for any line, the prospect of new consumers is always an important consideration, particularly where the course traverses territory in which it alone possesses a franchise to operate.

To remedy this situation and prevent further delay, Southern Cal at the joint hearing expressed a willingness to reroute its line approximately one-half mile further away from the city limits, following 42nd Avenue on the north and Monroe Street on the west. Indio objected to this route also, because service from the line could easily be distributed to a group of potential customers located at the point where Monroe Street crosses U. S. Highway No. 99, and other scattered prospects further south, where Monroe Street intersects 46th Avenue. Southern Cal objects to relocating its line further to the west, as each such move entails the installing of an additional line of the same length to carry gas back eastward to the City of Coachella.

From the foregoing, it is evident that Southern Cal, though possessing a county franchise, has not extended service into this particular area or zone because of the sparseness of population and distances involved. It is also evident that Indio, though not possessing a county franchise, has extended service into a limited part of this area where economically practicable, and it is probable that had the Texas Pipeline not completely altered conditions, Indio would have been permitted to continue and to enlarge these operations without challenge from Southern Cal.

It is therefore reasonable to conclude that Indio has earned the right to continue to operate in the unincorporated area into which it has thus expanded and that a certificate of public convenience and necessity should be granted permitting it to exercise the recently acquired franchise therein. This area should not be as large as that covered by the franchise, but should be limited on the north and west of the city to the area now actually being served or which would be served by a normal expansion under Indio's filed extension rule. The unincorporated portion of a two-mile square bounded on the north by 43rd Avenue and on the west by Monroe Street appears to be a reasonable addition to Indio's present service area.

Throughout these proceedings Indio has repeatedly asserted that it is in a position to furnish and maintain adequate gas service to a much larger area, and by so doing has committed itself to the furnishing and maintenance of adequate service to the smaller area.

It is also reasonable to conclude that in the interest of avoiding needless and costly duplication of facilities, Southern Cal should be restrained from serving any customers within said area. However, should Southern Cal install a portion of the proposed supply line to Palm Springs or of the branch line therefrom to Coachella in Monroe Street it should, in that event, supply service to applicants along the east side of that portion of the street so occupied if not located more than 250 feet away from the property line. The order following will so provide.

The certificate of public convenience herein granted is subject to the following provisions of law:

That the Commission shall have no power to authorize the capitalization of the franchise involved herein or this certificate of public convenience and necessity or the right to own, operate or enjoy such franchise or certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to a political subdivision thereof as the consideration for the grant of such franchise, certificate of public convenience and necessity or right.

O R D E R

Applications as above entitled having been filed, a public hearing or hearings having been held thereon, the matters having been submitted, the Commission being fully advised in the premises and hereby finding that public convenience and necessity so require,

IT IS HEREBY ORDERED that Indio Gas Company is granted a certificate of public convenience and necessity to exercise the rights and privileges granted by the County of Riverside by Ordinance No. 333 adopted November 3, 1947 in the unincorporated area surrounding the City of Indio, bounded on the north by the center line of 43rd Avenue, on the east by the center line of Van Buren Street, on the south by the quarter section lines of Sections 25 and 26 of Township 5 South, Range 7 East, San Bernardino Base and Meridian, and on the west by the center line of Monroe Street, subject to the exception contained in the paragraph of this Order next following.

IT IS HEREBY FURTHER ORDERED that, except upon further order from this Commission first obtained, Southern California Gas Company shall not hereafter exercise the franchise granted by the County of Riverside by Ordinance No. 272 adopted August 11, 1941, for the purpose of supplying gas within that portion of said county described in the preceding paragraph of this Order. In the event that Southern California Gas Company shall install any portion of the proposed supply line to Palm Springs or of the branch line therefrom to Coachella in that part of Monroe Street constituting the western boundary of the aforesaid area, then, in order to eliminate duplication of facilities and make the most economic service available, Southern California Gas Company shall, under its then effective rules and regulations, render service to any applicant within said area located along the east side of that portion of Monroe Street occupied by said pipe lines and distant not more than 250 feet from the east property line thereof.

IT IS HEREBY FURTHER ORDERED that the certificate of public convenience and necessity granted to Southern California Gas Company by Decision No. 34844, authorizing it to exercise the franchise granted by the County of Riverside by said

Ordinance No. 272, is hereby amended to the extent that the authority therein granted shall not be in conflict with the limitation imposed in the next preceding paragraph of this Order.

The effective date of this Order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 17th day of December, 1947.

Harold P. Kule
Justin F. Craccon
Harold P. Kule
R. F. Drury

Commissioners