

ORIGINAL

Decision No. 49199

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 SOUTHERN COUNTIES GAS COMPANY OF)
 CALIFORNIA under Section 1002 of)
 the Public Utilities Code for a)
 certificate that public convenience)
 and necessity require the exercise)
 of the rights and privileges granted)
 by Ordinance No. 845 of the City of)
 San Buenaventura, California.)

Application No. 34639

Frederick G. Dutton, for applicant.

O P I N I O N

Southern Counties Gas Company of California in this proceeding asks for a certificate of public convenience and necessity to exercise the rights and privileges of a franchise granted by the City of San Buenaventura, Ventura County, by its Ordinance No. 845 adopted June 8, 1953, permitting the installation, maintenance, and use of a gas distribution and transmission system in the streets of said city. A public hearing was held before Examiner C. E. Crenshaw on October 1, 1953 in Los Angeles.

The franchise referred to, a copy of which is attached to the application and designated as Exhibit "A", and also submitted as Exhibit 1 at the hearing, was granted by the City of San Buenaventura in accordance with the Franchise Act of 1937 and is for a term of 40 years. A fee is payable annually to the city equivalent to 2 per cent of the gross annual receipts arising from the use, operation or possession of the franchise but not less than 1½ per cent of the annual gross receipts from sales of gas within the limits of such city and under this franchise and under any franchise owned by grantee and derived under Section 19 of Article XI of the

Constitution of California (as said section existed prior to its amendment on October 10, 1911).

The costs incurred by applicant in obtaining the franchise are stated to have been \$169.92, which amount does not include the \$50.00 filing fee and the expense of publication of Notice of Hearing. The total cost of the franchise and certificate, according to the record, is \$219.92.

The new franchise granted by Ordinance No. 845 supersedes a previous franchise granted by Ordinance No. 126 to E. P. Foster on November 7, 1903, for a period of 50 years from November 2, 1903. As this old franchise would expire on November 1, 1953, it was necessary that a new franchise be obtained.

The old franchise granted by Ordinance No. 126 was for a term of 50 years and provided for a fee payable annually to the City equivalent to 2 per cent of the gross annual receipts arising from the use, operation, or possession of the franchise, but not less than 1 per cent of the gross receipts from the sales of gas within the limits of such city under said franchise.

The annual payment under the old Ordinance No. 126 to the City of San Buenaventura, based on the year ended December 31, 1952, was \$5,845.83 as computed under the Dinuba formula using the 2 per cent provision. The calculated payment for the same period under the new franchise granted by Ordinance No. 845 would be \$5,718.68 by applying the 1½ per cent provision, which is higher than the usual 1 per cent as set forth in the Franchise Act of 1937, and \$5,845.83 using the 2 per cent provision under the Dinuba formula, which is the same amount as that paid under the old franchise.

This utility or its predecessors for many years have served gas in and about the City of San Buenaventura without competition. It is the Commission's opinion that the requested authority should be granted.

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

1. 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.
2. That the franchise involved herein shall never 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 municipality therefor at the time of the acquisition thereof.

O R D E R

The above-entitled application having been filed, a public hearing having been held, the matter having been submitted and now being ready for decision,

IT IS HEREBY FOUND AS A FACT that public convenience and necessity require the exercise by applicant of the right, privilege and franchise granted to applicant by Ordinance No. 845 of the City of San Buenaventura.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity is granted to Southern Counties Gas Company of California to exercise the rights and privileges granted by the City

of San Buenaventura, Ventura County, by Ordinance No. 845 adopted June 8, 1953.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 13th day of October, 1953.

R. E. [Signature]
 President

Justin J. [Signature]

[Signature]

[Signature]

 Commissioners