

ORIGINAL

Decision No. 57269

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
PACIFIC LIGHTING GAS SUPPLY COMPANY,
a corporation, under Sections 1002
and 1005 of the Public Utilities Code
for a certificate that public con-
venience and necessity require the
exercise of the rights and privileges
granted by Ordinance No. 1063 of the
City of Westminster.

Application No. 40504

O. C. Sattinger, J. R. Elliott and R. D. Twomey,
by R. D. Twomey, for applicant.

O P I N I O N

By Application No. 40504, filed with this Commission on October 14, 1958, Pacific Lighting Gas Supply Company, a corporation, asks for a certificate of public convenience and necessity authorizing it to exercise the rights and privileges of a franchise granted by Ordinance No. 1063 of the City of Westminster, Orange County, California, to lay and use pipes and appurtenances transmitting gas under, along, across, and upon the streets of the city.

A public hearing on the application was held in Los Angeles on December 11, 1958, before Examiner Kent C. Rogers. Prior to the hearing notice thereof was published as required by this Commission. No objections to the granting of the requested certificate were entered.

The franchise referred to, a copy of which is attached to the application as Exhibit A, was granted by the city purportedly in accordance with the Franchise Act of 1937, in that it provides that

the grantee shall pay to the city a sum annually which shall be equivalent to two percent (2%) of the gross annual receipts of grantee arising from the use, operation, or possession of said franchise. The purported franchise further states that "as used above the phrase 'two percent (2%) of the gross annual receipts of Grantee arising from the use, operation or possession of said franchise' shall be construed as that similar phrase found in Section 3 of Chapter 578, page 777, Statute of 1905, popularly known as the Broughton Act." (The correct citation is now Division 3, Chapter I, California Public Utilities Code). The franchise is of indeterminate duration.

The ordinance was adopted on June 16, 1958, and became effective on July 31, 1958. The written acceptance required by Section V of the ordinance was filed on July 30, 1958.

The costs incurred by the applicant in obtaining the franchise are stated to have been \$65.38, which do not include the costs incident to this application (Exhibit No. 1).

Applicant's land and right of way representative testified that applicant is engaged in the transmission of natural gas through pipe lines passing through the City of Westminster incidental to its regular business of purchasing natural gas at wholesale and selling such natural gas at wholesale to its two customers, Southern Counties Gas Company of California and Southern California Gas Company; that it is essential for applicant to construct and maintain transmission pipe lines in order to continue service to its customers; that heretofore such pipe lines and appurtenances were installed and maintained pursuant to a franchise known as Orange County Franchise No. 165, covering all of the area in which the City of Westminster is located, until December 18, 1969; and that the

Westminster franchise was obtained pursuant to a request from the City of Westminster and is in lieu of Orange County Franchise No. 165 in the limits of the city.

The annual payment to the City of Westminster, pursuant to the franchise, is estimated to be about \$1,300.

Upon the record herein the Commission finds that public convenience and necessity require the exercise by the applicant of the rights, privileges and franchise granted to the applicant by the City of Westminster Ordinance No. 1063. The certificate of public convenience and necessity herein granted is subject to the following provisions of law:

- a. 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 for any amount of money 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.
- B. 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 thereon, the matter having been submitted, and the Commission having made the foregoing finding and based upon said finding,

IT IS HEREBY ORDERED:

(1) That Pacific Lighting Gas Supply Company, a corporation, be and it hereby is granted a certificate that public convenience and necessity require the exercise by it of the rights, privileges and franchise granted to it by Ordinance No. 1063 of the City of Westminster, State of California, which ordinance was adopted on the 16th day of June, 1958, and became effective on July 31, 1958.

(2) That Pacific Lighting Gas Supply Company shall not exercise said franchise for the purpose of distribution or retail sale of gas or other commodities.

(3) That the Commission may hereafter, by appropriate proceedings and order, limit the authority herein granted to applicant as to any territory within said city not then being utilized by it.

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

Dated at San Francisco, California, this 20th day of January, 1959.

[Signature]
President
[Signature]
[Signature]
Theodore Deviser
Commissioners