

Decision No. 58853

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Western States Utilities and Kenneth Sowers d/b/a Winterhaven Water Company for Permission to Sell a Water System at Winterhaven, California, and to Execute a Note and Encumber Utility Property as a Part of said Sale.

Application No. 40521

Application of Western States Utilities for a Certificate of Convenience and Necessity for the Operation of a Water System at Winterhaven, California, For an Order Approving the Rates Proposed to be Charged for the Water to be Furnished, and For Approval of Certain Proposed Opening Book Entries of the Water System of Western States Utilities.

Application No. 40522

Application of Western States Utilities to Issue Stock and to Establish Bank Credit and Expend the Money Available as a Result of said Credit.

Application No. 40523

Application of Western States Utilities for a Certificate (of Convenience and Necessity) Authorizing It to Construct and Operate a Gas System in the Area of Winterhaven, California, and for an Order Approving the Rates Proposed to be Charged for the Gas to be Furnished.

Application No. 40524

Fennemore, Craig, Allen & McClennen, by John J. O'Conner III, for applicant, Western States Utilities.
Kenneth Sowers, in propria persona, applicant.
Robert Salter, for Southern California Gas Company, interested party.
Robert P. Randall and Harold Grondahl, Jr., for the Commission staff.

O P I N I O N

On October 20, 1958 the applicants, Western States Utilities, a California corporation, hereinafter referred to as the company, and Kenneth Sowers filed an application requesting an order authorizing Sowers to sell and the company to purchase an existing water system at Winterhaven in Imperial County. This application

also requested authority for the company to execute promissory notes and to encumber utility property. On the same date the company filed three other applications wherein it requested certificates of public convenience and necessity to operate a gas and a water system in the area of Winterhaven and an order authorizing it to issue stock.

The four applications were consolidated for public hearing on June 11, 1959 at Winterhaven, before Examiner William L. Cole. At this hearing, the company amended Applications Nos. 40522 and 40524 by requesting a certificate of public convenience and necessity to exercise a franchise acquired from the County of Imperial. The four applications were submitted on June 11, 1959 subject to the filing of late-filed exhibits which have since been received. Subsequent to the submission of these matters, however, a petition filed by a substantial number of persons claiming to be residents of Winterhaven was filed with the Commission requesting in effect that the application for authority to transfer the water system be denied. While it is the Commission's opinion that these petitioners should have made their views known at the original hearing, the large number of persons signing the petition indicates to the Commission that the water system and water certificate matters should be reopened for further hearing. The matters set forth in Applications Nos. 40523 and 40524 dealing with the gas certificate and the issuance of stock, however, will not be reopened but will be decided by this opinion and order.

Gas System and Certificate

The gas distribution system proposed to be constructed and operated by the company would serve the area of Winterhaven. This system will consist of a transmission main that will extend approximately 1.3 miles from the California-Arizona border to Winterhaven. A system of distribution mains will be installed to serve the area. It is estimated that the cost of the system will be \$44,540. At the present time there is no natural gas system servicing this area.

The company plans to purchase the natural gas from the

El Paso Natural Gas Company at the California-Arizona border. It is estimated that by the third year of operations, the company will have a total of 189 customers. The company proposes to deliver natural gas in Winterhaven at rates set forth in Exhibit 2 introduced into evidence at the hearing. The Commission staff noted that certain portions of the rates of El Paso Natural Gas Company are being collected subject to refund and recommended that the tariffs provide for the passing on to the consumer any refund which may be made to the company in the future. The company will be authorized, initially, to adopt the proposed rates with this staff recommendation, as more fully set forth in Appendix A to this decision.

The Commission staff also recommended that the company place in its tariff a provision for the variation of the effective rate to be charged consumers dependent upon the heating value of the gas actually served. The rates proposed by the company do not specify a heating value content of the gas. Likewise, the record in this matter is not conclusive as to the heating value content of the gas to be received from the El Paso Natural Gas Company. Therefore, upon commencing service, the company shall determine the actual B.T.U. heat content of the gas furnished by the El Paso Natural Gas Company in accordance with the Commission's General Orders Nos. 58A and 58B. Within ninety days after commencing service, the company shall submit to the Commission a proposed tariff revision to show heating values, base rates at 1100 B.T.U., and the manner of converting base rates to effective rates at actual heat content being served.

At the time of the hearing, the company requested authority to place an escalator clause in its tariff relative to its gas rates

in order to offset any increases in the price of gas from its supplier. This request is denied. The company will have ample notice of any proposed increase in the rates of its supplier and, in such an event, the company is free to file an appropriate application in connection therewith.

Based upon all the evidence and the record in the matter, the Commission finds and concludes that public convenience and necessity require the construction and operation of a public utility gas system by Western States Utilities in Imperial County in the area set forth on the map marked Exhibit 4 in this proceeding.

Certificate to Exercise Franchise Rights

On January 19, 1959 the company received a franchise from the County of Imperial authorizing the company to construct and operate a system of mains and pipelines along and across public streets and places, together with the right to transport gas and/or water through such mains and pipes. This franchise limits the authority granted to the geographical area set forth in Exhibit 4 of this proceeding. The franchise is also limited to a term of 25 years. A fee is payable annually to the county in the amount of 2 percent of the gross annual receipts of the company arising from the use, operation, or possession of the franchise. This fee is not required, however, during the first five years of the term of the franchise.

Inasmuch as the Commission is not passing upon the applications dealing with the water system and certificate in this opinion and order, the Commission shall consider at this time only that portion of the franchise authorizing the construction and operation of a system of mains and pipelines to transport natural gas. Based upon the evidence in the record, the Commission finds and concludes that public convenience and necessity require the exercise by the

company of the rights, privileges and franchise granted to the company by resolution of the Board of Supervisors of the County of Imperial, dated January 19, 1959, authorizing the construction and operation of a system of mains and pipelines to transport natural gas.

Finances

The company, being a newly formed corporation, has not as yet issued any capital stock. The company was incorporated with an authorized capital of \$300,000 consisting of 30,000 shares of common stock. The company is requesting authority to issue 3,000 shares of such stock for which it will receive \$30,000.

In its application, the company stated that the proceeds from the issuance of the stock will be used to pay for the purchase of the existing water system in Winterhaven, to pay for proposed capital improvements to the water system, to pay for the construction of the gas system and to pay certain interests on obligations. Section 817 of the Public Utilities Code sets forth the purposes for which the proceeds of stock issues may be applied. The payment of interest is not included therein.

It is the Commission's opinion and finding that the company should be authorized to issue the stock as requested. The proceeds from the sale shall only be used, however, to pay for the construction of the gas system and to purchase the existing water system and pay for proposed capital improvements thereto if authority for such purchase and improvements is subsequently granted by the Commission. The Commission further finds that the money, property, or labor to be procured or paid for by the issuance of the securities herein authorized is reasonably required for these three purposes, and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

The company has also obtained a commitment for the extension of credit from the National Boulevard Bank of Chicago, Illinois. The treasurer of the company testified that in using the credit reflected by this commitment, it is not the intention of the company to execute any promissory notes, the duration of which exceed one year. The witness further testified that if it becomes necessary to issue any such extensions of indebtedness, the company will apply to the Commission for authority to do so.

Situs of Records

The company is also requesting authority to maintain the records of its gas operations in Phoenix, Arizona. The reason for this request is that the records will be kept by personnel of the Arizona Water Company which has its main office in Phoenix. It is recognized that operating convenience may be served by maintaining the records in Phoenix; however, this Commission may from time to time require the members of its staff to examine these records. Such an examination is made more difficult where the records are placed out of state. It is the Commission's conclusion that the company's request is not adverse to the public interest and that the authority requested should be granted; however, this authority will be granted subject to the condition that the company will make any and all of its records available on reasonable notice at any time in Winterhaven, or in any other place mutually convenient in California.

O R D E R

The above-entitled applications having been considered and a public hearing having been held thereon,

IT IS ORDERED:

1. That the submissions heretofore entered in Applications Nos. 40521 and 40522 be and they hereby are set aside and these matters are reopened for further proceedings and public hearing to be held before

such commissioner or examiner at such time and place as may be hereafter designated.

2. That a certificate of public convenience and necessity is granted to Western States Utilities to acquire, construct and operate a public utility system for the distribution and sale of natural gas within the area shown in Exhibit 4 of this proceeding.

3. That a certificate of public convenience and necessity is granted to Western States Utilities to exercise that portion of the rights, privileges, and franchise granted to it by resolution of the Board of Supervisors of the County of Imperial, dated January 19, 1959, authorizing the company to construct and operate mains and pipelines for the transmission of natural gas.

4. That the certificates herein granted in paragraphs 2 and 3 are 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 these certificates of public convenience and necessity or the right to own, operate or enjoy such franchise or certificates 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.
- 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.

5. That Western States Utilities is authorized to issue 3,000 shares of its common stock for no less than \$30,000 for the purposes herein set forth.

6. That Western States Utilities is authorized to file, after the effective date of this order, the gas rates set forth in Appendix A attached to this order to be effective on or before the date gas is first rendered to the public under the authority herein granted. Western States Utilities shall file in quadruplicate with the Commission in conformity with the provisions of General Order No. 96 a complete set of tariff schedules for its gas operations including service area maps, rates, rules and sample copies of printed forms that are normally used by the utility in its operations in connection with the customers' services.

7. That, if pursuant to orders of the Federal Power Commission, Western States Utilities receives refunds relating to its purchases of gas from El Paso Natural Gas Company, such refunds shall be passed on to its customers. The proposed plan for passing such refunds on to the customer shall be submitted to this Commission for review within ninety days after the effective date of this order.

8. That Western States Utilities shall determine accruals for depreciation for its gas operation by dividing the original cost of the utility plant, less estimated future net salvage, less depreciation reserve, by the estimated remaining life of the plant. The company should review the accruals as of January 1 of the year following the date service is first rendered to the public under the rates and rules utilized and thereafter when major changes in utility plant composition occur and at intervals of not more than five years. The results of these reviews shall be submitted to this Commission.

9. That Western States Utilities is authorized to maintain the records of its gas operations in the office of the Arizona Water Company in Phoenix, Arizona with the condition that the company shall

make any and all of its records available upon reasonable notice at any time in Winterhaven or any other place mutually convenient in California.

10. That upon commencing service the company shall determine the actual B.T.U. heat content of the gas furnished from El Paso Natural Gas Company in accordance with General Orders Nos. 58A and 58B; and within ninety days after commencing service, the company shall submit to the Commission a proposed tariff revision to show heating values, base rates at 1100 B.T.U., and the manner of converting base rates to effective rates at the actual heat content being served.

11. That Western States Utilities shall file a report of the issue of the stock herein authorized as required by General Order No. 24A.

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

Dated at San Francisco, California, this 4th day of August, 1959.

Everett R. Tracy
 President

William J. ...
 S. ...

Richard J. ...
 Commissioners

Commissioner...Peter E. Mitchell... being necessarily absent, did not participate in the disposition of this proceeding.

Appendix A

The authorized tariffs and rules are to include the following items:

Schedule No. G-1

GENERAL NATURAL GAS SERVICE

APPLICABILITY

Available, upon application, to any residential or commercial customer for cooking, water heating, space heating, refrigeration, and other domestic or commercial uses.

TERRITORY

Territory within the Community of Winterhaven and environs.

RATES

| | <u>Per Meter Per Month</u> <u>Effective Rates</u> |
|--|--|
| First 200 cu.ft. or less | \$2.50 |
| Next 2,800 cu.ft., per 100 cu.ft. | .12 |
| Next 7,000 cu.ft., per 100 cu.ft. | .10 |
| Next 30,000 cu.ft., per 100 cu.ft. | .09 |
| Next 60,000 cu.ft., per 100 cu.ft. | .08 |
| Next 200,000 cu.ft., per 100 cu.ft. | .07 |
| Over 300,000 cu.ft., per 100 cu.ft. | .06 |

Minimum Charge

Per Meter Per Month \$2.50

Contingent Offset Charge

In accordance with D- * 58853 of the California Public Utilities Commission, the above base rates include offset charges relating to tariffs of the El Paso Natural Gas Company on file with the Federal Power Commission, which tariffs may involve refunds pursuant to orders of the Federal Power Commission.

SPECIAL CONDITIONS

(a) The contract period shall be set forth in the company's standard agreement for service.

(b) The terms and conditions of service shall be in accordance with the company's rules as set forth in the "Tariff Schedule".

*insert number of decision herein.