

**ORIGINAL**

Decision No. 71736

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
CLOVERDALE GAS COMPANY to install )  
piped gas system and sell metered )  
gas, and to establish rates there- )  
fore in the City of Fort Bragg and )  
surrounding area. )

Application No. 48227  
(Filed February 3, 1966)

N. E. Waltenspiel, for applicant.  
Arthur J. Schilder, for Small's Propane, Inc.,  
protestant.  
G. C. Young and H. Webster, for the Commission  
staff.

O P I N I O N

After due notice, public hearing in this matter was held at Fort Bragg before Examiner Thompson on July 19, 1966 and was submitted on briefs received September 1, 1966.

Applicant seeks a certificate of public convenience and necessity authorizing the construction of a gas plant in the City of Fort Bragg to distribute and furnish hydrocarbon gas (propane), and to establish rates for providing such service. The application is opposed by protestant Small's Propane, Inc., and by the Commission staff.

Applicant is a corporation whose capital stock is owned by N. E. Waltenspiel and Evelyn Waltenspiel. It has operated a public utility gas system (propane) in the City of Cloverdale since January 1, 1954 pursuant to a certificate granted by Decision No. 49259 in Application No. 34300. It was authorized by Decision No. 70947, dated July 12, 1966, in Application No. 48345 to sell that gas system to Pacific Gas and Electric Company.

N. E. Waltenspiel is also the owner, partner, or principal stockholder and officer in the following businesses: (1) Russian River Gas Company, a corporation operating a public utility gas system in Guerneville, Sonoma County; Flame Gas Company, a partnership with his son, engaged in the purchase and sale of propane in bulk; Flame Appliance Company, a partnership; L. P. Tank Company, a corporation; and Fruit Pac, a proprietorship. All of these enterprises are closely affiliated and are managed and controlled by N. E. Waltenspiel.

The initial plant proposed to be installed by applicant consists of 3,000 feet of 3-inch pipe, 30,000 feet of 2-inch pipe and 30,000 feet of 1-1/2-inch pipe together with tanks, regulators and a direct-fired vaporizer. Exhibit 2 is a map showing the proposed layout of the gas mains. It discloses what is essentially a system of three loops of 2-inch mains with 1-1/2-inch lateral lines. The proposed system covers virtually all of the subdivided area of the City of Fort Bragg. The exhibit discloses some 72 valves to be installed on the mains. It is proposed that the gas generating plant be installed at the northwest portion of Block 79, Northern Addition, near the intersection of Manzanita and Franklin Streets in Fort Bragg. This location is one block (approximately 400 feet) away from State Highway 1 and is approximately 800 feet from the nearest rail of the California Western Railroad. Applicant's president stated that initially one Mitchell direct-fired vaporizer with a capacity of 70 gallons per hour will be installed at the site and as customers are obtained and the load increases additional vaporizers will be installed. No mention was made of other facilities, such as tanks and regulators, that will be installed at the plant site.

Applicant estimated that the initial plant installation together with 500 service connections will cost \$178,500, which cost is estimated as follows:

Tanks and Regulators	\$15,000
3,000 ft. of 3" pipe @ \$2.00	6,000
30,000 ft. of 2" pipe @ \$1.50	45,000
30,000 ft. of 1-1/2" pipe @ \$1.25 . . . . .	37,500
500 services @ \$150.00 . . . . .	75,000
	<u>\$178,500</u>

Its annual cost of operation for servicing 500 connections is estimated as follows:

Depreciation	\$ 4,462
Labor	6,000
Propane	62,568
Management	10,000
Bookkeeping	3,000
Bad debts - Uncollectibles	1,000
Taxes	8,000
	<u>\$95,030</u>

The estimated labor expense represents the annual wages of one employee who will be stationed at Fort Bragg. He will read meters, perform general service duties, and be available to receive inquiries or complaints from the public. The estimated expense for propane is based upon the posted San Francisco Bay area price plus the minimum rate for transportation from the Bay Area to Fort Bragg. Applicant will purchase the propane from Flame Gas Company at said price. Flame Gas Company purchases propane from California Liquid Gas Company which, in turn, acquires it from producers, such as Standard Oil Company of California, in the Bay Area.

The estimated expense for management represents a fee for managerial services. The estimated expense for bookkeeping also represents a fee to be paid to Flame Gas Company for performing such service. Flame Gas Company employs a head bookkeeper at \$7,000 per year together with an assistant at an undisclosed salary. They maintain the books of Flame Gas Company, Russian River Gas Company, Flame Appliance Company, L. P. Tank Company and Cloverdale Gas Company.

Applicant estimates it will take approximately two years to complete installation of the entire system. During the period of construction it will provide service to customers on portions of the system that are installed. At the end of two years applicant estimates it will have 580 customers and an annual revenue of \$108,000. Its president testified that the estimate was based upon applicant's experience at Cloverdale; that he had driven an automobile about the streets in Fort Bragg and from his observations concluded that the potential number of customers, both residential and commercial, would be substantially the same as the number of customers on the Cloverdale system; and for that reason he utilized the experience of the Cloverdale operation in forecasting the number of customers and gas usage for Fort Bragg.

The Mayor of Fort Bragg testified that applicant and another group represented by Pacific Delta Gas, Inc. have discussed with the City Council the matter of the granting of a franchise to serve gas in the city. The Council decided it would not issue a franchise until such time as one or the other of the parties received a certificate of public convenience and necessity from the Commission.

The secretary-treasurer of Pacific Delta Gas, Inc., representing Small's Propane, Inc. and Kemppe Hardware Company, in a statement of counsel stated that Small's and Kemppe were the group that had appeared before the City Council and had indicated an interest in acquiring a franchise. He said that the companies serve Fort Bragg with bottled gas and had contemplated a joint venture in the establishment of a piped gas system in the city. They had an engineering study made and requested estimates from contractors of the cost of installing a system. As a result of this study it was determined by them that the installation of the system would require

an investment of approximately \$275,000 and that rates which would be competitive with those proposed by the applicant would not provide sufficient revenue to justify the investment. For that reason the parties that he represents decided not to make applications to the Commission and to the City of Fort Bragg for the necessary authorities to construct a piped gas system. He stated that his principals believe that the system proposed by applicant is not economically feasible and for that reason protest the application.

A public utility financial examiner of the Commission's Division of Finance and Accounts who is in charge of the Compliance Section of that division testified that in 1955 and 1956 the division made certain recommendations to applicant for improvement of the accounting records of Cloverdale Gas Company and its affiliate Russian River Gas Company. Correspondence was received from the applicant stating that the recommendations were not acceptable and would cause too much hardship on the company if it were to follow them. In 1958 the staff made a follow-up investigation and found that applicant's accounting procedures had not been changed. On June 1, 1961 a conference was held by the staff with representatives of applicant to discuss those procedures. The discussion centered about two procedures the staff suggested be changed, namely; the allocation of employee's wages between utility and nonutility operations conducted by applicant, and the fee paid to applicant's affiliate for accounting and administrative services. The president of applicant stated that he considered the recommendations would place an unreasonable burden on the company and that he had no intention of complying with the staff's requests. The witness stated that applicant had not complied with General Order No. 104 in the

filing of annual reports. The annual reports of applicant for the years 1953 to 1965, both inclusive, were received in evidence by reference.<sup>1/</sup>

Section 584 of the Public Utilities Code provides that every public utility shall annually furnish a report to the Commission at such time and in such form as the Commission may require in which the utility shall specifically answer all questions propounded by the Commission, and that all reports shall be under oath when required by the Commission. General Order No. 104, effective November 13, 1956, requires every public utility to file with the Commission on or before the 31st day of March of each year an annual report which shall cover the immediately preceding calendar year, and shall be made under oath by the president or secretary if the utility is a corporation.

An examination of the annual reports covering applicant's operations for the years 1956 to 1965, inclusive, discloses that: only one of ten reports was filed on or before the March 31st due date, five were filed in the month of April following the due date, three were filed in the month of May, and one was filed in the month of July; the reports for the years 1956 to and including 1961 were made under oath by the president and, with minor exceptions, were complete; however, the reports of 1961 to and including 1965 were not made under oath and in each instance information requested is lacking because specific questions are not answered.

An assistant utilities engineer of the Commission's Utilities Division Gas Section testified that he had made a study of the operation proposed by applicant. His testimony, in brief, is that the information concerning the design and construction of

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<sup>1/</sup> The reports were received in accordance with Rule 63 of the Commission's Rules of Procedure and are designated Items A through M, respectively.

the plant is not sufficient to base an opinion as to whether the operation is feasible. He said that his survey of the area involved disclosed that the number of structures using bottled propane is higher than the number of customers estimated by applicant and it is his opinion that the estimate made by applicant in that respect is reasonable. It was his recommendation that if the application is granted applicant be required to establish rates per therm<sup>2/</sup> of gas provided rather than the rates per cubic foot proposed by applicant.

The ultimate question to be determined herein is whether public convenience and necessity require the construction by applicant of its proposed gas system. That determination requires the weighing of several factors and the answers to certain questions, such as, (1) is there sufficient demand for service at the proposed rates to generate enough revenue to make the operation of the system economically feasible; (2) is the applicant fit, willing and able to conduct the operation; (3) is the proposed system reasonably compatible with service of natural gas and (4) is the proposed system of such design and construction as to have the capacity to provide safe, reasonable and uninterrupted service. All those factors are somewhat inter-related.

With respect to the design of the system, applicant's president pointed out that he has designed a number of propane gas systems and that such systems have been in operation for a number of years without any serious interruptions or casualties. The only specifications of the proposed system he has furnished, however, are in the diagramatic sketch of the system of mains and his statement that a Mitchell vaporizer, which is a direct-fired type, would be

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<sup>2/</sup> A therm is a unit of heat consisting of 100,000 British Thermal Units (Btu). In determining customer usage in therms the engineer used the formula:

$$\text{No. of Therms} = \frac{\text{Usage in cubic feet} \times 2520 \text{ Btu per cubic foot}}{100,000 \text{ Btu per therm}}$$

utilized. With respect to the construction of the system both applicant's president and its vice president testified that the design and construction comply with General Orders 112-A and 94-A. Other testimony given by them indicates that such will not be the case. One illustration is that applicant proposes to install a direct-fired vaporizer. General Order No. 94-A, Rule 4(e)6 provides that direct-fired hydrocarbon vaporizers and heaters shall only be allowed after special authorization has been granted by the Commission. The application does not request such special authorization, and if the president's testimony concerning the proposed installation of the direct-fired vaporizer is construed as a request for such special authorization, applicant has not provided any information which would enable us to grant it. It has not seen fit to describe where the vaporizer will be located with respect to other facilities on the property, whether or not it will be housed, and if so, the specifications of the building, and it has not furnished the specifications, and particularly the operating limitations, of the Mitchell vaporizer.

From the testimony it is not clear what type of pipe will be used for the mains. It was described generally by the president as plastic coated pipe. The vice president referred to it generally as plastic vinyl coated and then more specifically as "Johns-Manville PVC pipe, A-53 Code". PVC pipe is an extruded plastic pipe made of polyvinyl chloride. Johns-Manville manufactures such pipe as well as asbestos-cement pipe, both of which are designed primarily for transmitting liquids such as water. We are not aware that it manufactures a metal pipe with a polyvinyl chloride coating designed for transmitting gas. General Order 112-A sets forth the rules and requirements governing the design and construction of utility gas



transmission and distribution piping systems. PVC pipe is not a material authorized by the general order for utility gas transmission or distribution piping systems. The Commission may authorize a departure from the general order and, in a few instances involving natural gas utilities, has authorized the use of certain types of plastic pipe for distribution systems. Here again, however, applicant has not seen fit to be specific concerning the design and construction of the piping system. The equipment applicant proposes to install may or may not be satisfactory. Such a determination cannot be made on this record.

The applicant's estimate of the cost of installing the system indicates that a tank will be constructed for storage of propane. Nowhere in the record is there any indication of the capacity of that tank. Consideration of an application to construct a gas system requires a determination of whether the system has sufficient capacity to provide gas at peak requirements for a reasonable length of time. Considering the distance of Fort Bragg from the supply sources of propane, together with the terrain and transportation facilities between the supply sources and Fort Bragg, it would appear that the system should have a capacity to serve six days at peak requirements. Not only does the record fail to show the capacity of the system, but it also fails to disclose any estimate of the amount of gas required to supply the peak requirements of the area to be served.

The matters mentioned above have a bearing upon the issue of whether the system is economically feasible. Applicant has estimated the cost of installing the system and the annual expenses of operating the system based upon the type of facilities it proposes to install. It is apparent from the foregoing that it will have to

obtain special authorization from the Commission to utilize the materials and construction that it contemplates. If that special authorization is denied, and applicant is required to conform to the existing rules in the general orders, it is readily apparent that its costs of installation and its annual operating expenses will be higher than estimated. Assuming that the proposed rates will provide a reasonable rate of return on the contemplated investment, if that investment is increased the rates will have to be increased in order for applicant to attain a reasonable return.

At the present time Fort Bragg is supplied with electricity, bottled gas and fuel oil so that if applicant's proposed operation is to be economically feasible its rates would have to be sufficiently low to induce users of the presently available services to subscribe to the service proposed by applicant. The president estimated that applicant's proposed rates would result in dollar savings in the purchase of energy of about fourteen percent. This estimate is based upon the difference in the price of bottled propane and the charges to applicant's customers at Cloverdale. Applicant's proposed rates for Fort Bragg are higher than the rates it charges at Cloverdale. In the circumstances it may be assumed that the estimated savings of fourteen percent is somewhat high. It is entirely possible that if applicant were required to change the design and construction of the proposed system so as to conform in all respects with the requirements of General Orders Nos. 58-A, 94-A and 112-A, the additional capital expenditure could be substantial. Whether rates could be established which would provide opportunity to earn a reasonable rate of return on the additional investment and be sufficiently low to attract customers is conjectural. The

evidence offered by applicant does not permit a determination of whether the proposed operation is economically feasible, and the burden is upon it to make such showing.

We are aware that applicant's president has had experience in the design and operation of propane gas systems and that he is a reasonably successful business man. The record indicates that he believes his successes in those fields are a sufficient basis for the Commission to grant applicant a certificate of public convenience and necessity. It must be pointed out that the Commission, and not applicant, is charged with the duty of determining whether public convenience and necessity require the proposed operation, and in making that determination must know whether the proposed system will be safe and adequate to provide reasonable service. Where a system is designed and constructed in accordance with the requirements of the Commission's general orders there is a reasonable presumption that it will be safe. There is indication in this record that the applicant's proposed system is not designed and may not be constructed in accordance with the aforementioned general orders. Applicant, therefore, has the burden of showing that the proposed system, to the extent of the departures from the standards and requirements in said orders, will be safe. It has not made such showing. It has not shown that the system will provide adequate service for the delivery of propane gas or of natural gas. It made no determination of the number of degree-days in Fort Bragg nor of the locations in that city at which heavy or light demands for gas might be expected. Those determinations ordinarily are made in order to make reasonable estimates of the loads on the system which, in turn, are the data

required for the design of an adequate system. No information was presented by applicant of the storage capacity proposed nor is there any indication of how much storage capacity is required to supply six days of peak demand gas without replenishment.

The present record will not permit the granting of a certificate. It is possible, however, that the deficiencies of the record may be overcome by a proper showing by applicant. We have before us an applicant who desires to install a piped gas system and who is financially able to install and operate the system. The mayor of the city applicant proposes to serve has testified that the city is desirous of having such a system. In the circumstances, applicant should be given an opportunity to supplement this record so as to make a proper showing.

It is our conclusion that if applicant submits a petition for further hearing, this proceeding should be reopened for the receipt of additional evidence. In the circumstances it is desirable to make preliminary findings on certain other issues and to set forth the type of showing applicant will be required to make at further hearings.

Applicant proposes to purchase propane from Flame Gas Company and to engage the services of the latter to perform administrative and managerial functions. Flame Gas Company is a partnership of the president and vice president of applicant. A public utility, its officers and management have a high degree of responsibility and trust to the public they serve. The rate-payers are entitled to the benefits of the efforts and dedication of the officers and the management in the operation of the utility. If the officers of applicant believe that they are entitled to any profits or gain as partners of Flame Gas Company from the services

performed by the partnership for applicant in excess of that amount which may be considered to be reasonable compensation for their services as officers, they may be mistaken. Utilities are not necessarily entitled to rates which will cover all recorded expenses; they are only entitled to recover reasonable expenses. Because of the special duty and responsibility the officers have toward the ratepayers, any transactions between the utility and its officers will be carefully scrutinized by the Commission and the utility has the burden of showing the reasonableness of any compensation paid by it to its officers for services performed. In order to support any estimates of the cost of propane and administrative expenses applicant should be prepared to disclose the operations and the revenues and expenses of Flame Gas Company.

With respect to the staff's assertion that applicant has not complied with the Commission's requirements concerning accounting and the filing of annual reports, except for its failure to submit annual reports on the dates due, to verify

said reports under oath, and to answer all questions shown on the forms of the reports (all of which constitute violations of General Order No. 104) it has not been shown by the staff that applicant has not complied with requirements of the Commission. The failure to comply with General Order No. 104 is only one factor to be considered in determining the fitness of applicant to operate a public utility. Sections 2105 through 2113 of the Public Utilities Code provide for adequate means to enforce compliance with the orders of the Commission. In this instance, if it can be shown that applicant can and will provide gas at a substantial savings in cost to the people of Fort Bragg with a plant that will adequately and safely provide reasonable service, the evidence of the past violations of General Order No. 104 will be outweighed.

Provided applicant desires to file a petition stating that it desires to present additional evidence in support of its application, it should be prepared to present at such further hearing the following data:

1. Detailed specifications of the materials to be used in the proposed construction.

2. The contemplated schedule for construction.

3. Specifications of the manner in which the work is to be performed.

4. The precise location of the vaporizer, the specifications of its housing, if any, a description of the buildings adjacent to the vaporizer and a description of the use of all land within 500 feet of the vaporizer.

5. The specifications of all automatic controls that will be used in the gas plant and system.

6. The specifications of all vessels and tanks that will be used for the storage of liquid propane or propane gas.

7. The anticipated extreme cold temperature of the area to be served, the average commercial and residential hourly consumption estimated for such extreme cold temperatures, the pressure drops that may be anticipated within the system when serving at such extreme cold temperatures, and the manner by which such estimated pressure drops were derived.

8. The details of all services that will be provided applicant, directly or indirectly, by Flame Gas Company or any other company in which any of the stockholders, directors or officers of applicant have a pecuniary interest; and the costs to such company or companies of providing the individual services.

9. Whether construction will be performed by any company in which any of the stockholders, directors or officers of applicant have a financial interest, and if so the terms of the contract under which such work will be performed. Applicant is

notified that in the event any construction is performed by any such affiliated company, for rate-making purposes the investment in plant will be considered to be the actual cost of construction to such affiliate.

It is realized that applicant after further consideration may desire not to prosecute its application. We therefore conclude that the order which follows should authorize the filing of a petition for further hearing which, if filed, will result in further proceedings herein. Applicant is placed on notice that if said petition is not filed with the Commission on or before March 31, 1967, a supplemental order may be issued denying the application.

O R D E R

IT IS ORDERED that:

1. Applicant is authorized to file, on or before March 31, 1967, a petition for further hearing in this proceeding.
2. In the event said petition is filed as authorized in the preceding paragraph, the submission of this application is set aside and further hearing shall be had before a Commissioner or Examiner to be designated by the Commission, at a time and place to be set.

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

Dated at San Francisco, California, this 30th day of DECEMBER, 1966.

Commissioner Frederick B. Holoboff did not participate in the disposition of this proceeding.

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

[Signature] President  
George T. Grover  
[Signature]