

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of the )  
TRACY GAS COMPANY, )  
a corporation, for a certificate of )  
public convenience and necessity to )  
furnish gas to the City of Tracy, )  
San Joaquin County, and for an order )  
authorizing the issue and sale of )  
\$100,000.00 of its capital stock and )  
\$100,000.00 of its first mortgage )  
bonds to finance such contemplated )  
improvement. )

ORIGINAL

Application No. 13295.

Leon Melekov, for applicant.

BY THE COMMISSION:

O P I N I O N

Tracy Gas Company asks the Commission to declare that public convenience and necessity require and will require it to construct, maintain and operate an artificial gas plant in the City of Tracy and to exercise the rights and privileges granted by the City of Tracy in an ordinance awarded August 5, 1926, and filed in this proceeding. The company further asks the Commission to authorize it to issue and sell \$100,000.00 of common stock and \$100,000.00 of first mortgage six percent 20-year bonds to pay the cost of constructing said gas plant.

Tracy Gas Company was recently organized with an authorized capital stock of \$150,000.00 divided into 15,000 shares of the par value of \$100. each. Among other things, the corporation is authorized to acquire, hold, manage and operate buildings, tanks, machinery, pipes and pipe lines and any and all other appliances for manufacturing, producing and distributing gas and its by-products and any and all other illuminant products for light, heat, power and any and all other beneficial uses and purposes to which they may be applied.

Tracy Gas Company proposes to construct forthwith an artificial gas plant in the City of Tracy at an estimated cost of about \$145,000.00. This cost is segregated as follows:-

Two acres of land in the city limits of Tracy . . . . .	\$5,000.00
One 50,000 cubic foot gas holder delivered and erected . . . . .	18,000.00
One double setting Beale patented gas generator . . . . .	5,750.00
One scrubber 6 ft. diameter by 20 ft. . . . .	1,850.00
Three purifiers six ft. diameter by 8 ft. . . . .	3,400.00
One purifier 10 ft. by 10 ft. . . . .	1,850.00
Two horizontal boilers 150 H.P. . . . .	10,000.00
Two steam turbines for blower . . . . .	600.00
Two water pumps . . . . .	300.00
Two oil pumps . . . . .	200.00
Two No. 5 Champion blowers . . . . .	170.00
One 30,000 gallon oil tank . . . . .	3,000.00
Concrete foundations for gas holder apparatus and lamp black runs and pits . . . . .	7,000.00
700 gas meters at \$10. each . . . . .	7,000.00
50,200 ft. of 2", 4" and 6" mains . . . . .	25,341.00
50,000 ft. of trenching and laying said mains . . . . .	12,500.00
Fittings, valves and drips . . . . .	1,300.00
700 Gas services 100' each and 70,000 ft. of 1" pipe . . . . .	9,100.00
15,000 ft. of smaller size pipes with necessary valves, stops and fittings . . . . .	3,000.00
700 stop cocks for meters . . . . .	560.00
Tools, signs and auto trucks . . . . .	2,000.00
Brick building 30 x 60 and other necessary buildings . . . . .	8,000.00
Fire bricks for generators . . . . .	3,000.00
Cost of welding pipes . . . . .	3,000.00
Concreting and repairing streets . . . . .	5,000.00
Engineering, supervision, construction and contingencies . . . . .	4,000.00
Traveling and miscellaneous expenses . . . . .	2,000.00
Organization expenses . . . . .	1,500.00
Actual money expended in obtaining franchises . . . . .	500.00
	<hr/>
Total.....	<u>\$145,121.00</u>

Subsequent to the hearing applicant has agreed to install a station meter, testing equipment, a second scrubber and office equipment at a total estimated cost of \$4,750.00. Instead of constructing a brick building it has agreed to construct its building of wood frame and galvanized iron which will reduce the cost from \$8,000.00 to approximately \$4,000.00. It will be noted that the cost of the building will be reduced by about the same amount as the estimated cost of the additional equipment which the company has agreed to purchase.

The company estimates that during the first year of its operation it can obtain 700 gas consumers. The monthly income of the company is estimated at \$3,500.00, or at \$42,000.00 per annum. The company estimates its operating expenses at \$1,784.00 per month, or at \$21,408.00 per annum. Our investigation and analysis of applicant's estimated expenses leads us to believe that it has not included in its estimate all items of expenses. We are of the opinion that applicant's operating expenses will more nearly approximate \$30,500.00 than the sum reported by it. Assuming that it can realize a revenue of \$42,000.00 and that its expenses will amount to \$30,500.00 it will have available for interest and other fixed charges, dividends and surplus, \$11,500.00.

There is filed in this proceeding a notice of sale of a franchise by the City of Tracy granting the right to lay gas mains and conduits for a period of fifty years in the public streets, alleys and thoroughfares of the City of Tracy for the purpose of carrying and distributing gas for light, heat and power, and to make connections with said pipes and conduits and the necessary appurtenances to the same. An affidavit filed by George L. Frerichs, clerk of the City of Tracy, shows that John F. Beals was the only bidder for the franchise, that his bid was accompanied by his check for twenty-five dollars as his initial bid, and that the Board of Trustees of the City of Tracy struck off, sold and awarded the franchise to said John F. Beals on August 5, 1926. The notice of sale provides that the successful bidder must file with the City Clerk a bond running to the City of Tracy in the penal sum of \$2,500.00. This bond has not yet been filed, with the result, it is said, that the franchise has not yet been formally granted to John F. Beals. The notice of sale, however, contains a recital of the terms and conditions of

the proposed franchise.

One condition reads as follows:-

"That the maximum price and charges for gas produced by the contemplated plant of grantees, their successors and assigns, to consumers of the City shall not, during the existence and life of this franchise exceed a minimum charge of One Dollar and Fifty Cents (\$1.50) for the first Four Hundred (400) cubic feet used; Two Dollars (\$2.00) per One Thousand (1,000) cubic feet for the next Two Thousand (2,000) cubic feet; and One Dollar and Fifty Cents (\$1.50) per One Thousand (1,000) cubic feet, for all over Two Thousand Four Hundred (2,400) cubic feet."

This provision is, we feel, of no effect, for the reason that the Railroad Commission has complete jurisdiction over the rates which Tracy Gas Company may charge. Those provisions of the franchise relating to the construction of the plant must necessarily be observed <sup>by</sup> John F. Beals, his successors or assigns.

As shown above, applicant reports that \$500.00 has been actually expended in acquiring the franchise. The record shows that John F. Beals paid to the City of Tracy \$25.00 to obtain the franchise, and that in addition he will be charged with approximately a like sum to cover advertising cost. The amount which the Tracy Gas Company may charge to capital account because of the acquisition of the franchise will be the \$25.00 plus the amount actually expended by John F. Beals or his assignee to reimburse the city for advertising the notice of sale of the franchise. Inasmuch as the Commission has not been furnished with a copy of the franchise, we cannot make a final order granting applicant a certificate of public convenience and necessity. The order herein grants a preliminary certificate.

Applicant asks permission to issue \$100,000.00 of common stock and \$100,000.00 of six percent twenty year bonds. Of the stock it intends to deliver \$600.00 par value to John F. Beals in payment for the franchise rights referred to herein, and deliver to John F. Beals \$4,000.00 par value in payment for services rendered in making the necessary investigations and engineering reports. Furthermore, the company requests permission to use \$600.00 of stock proceeds to pay attorney fees and organization expenses,

and use twenty percent of the stock proceeds to pay commissions and expenses to sell the stock. The remainder of the proceeds it proposes to use to pay in part the cost of its gas plant. It will be observed that the company has included in the estimated cost of the gas plant \$4,000.00 for engineering, supervising and construction contingencies, \$2,000.00 for travelling and miscellaneous expenses, \$1,500.00 for organization expenses and \$500.00 to cover expenses incident to obtaining the franchise. The Commission has not been furnished with any statement showing the expenditures incurred by John F. Beals to obtain the franchise or prepare his engineering report.

The plans and engineering report submitted to the Commission, do not warrant a \$4,000.00 expenditure. Moreover, to issue stock to John F. Beals for the purposes stated and also include the items mentioned in the estimated cost of the plant would result in a duplication. The request to issue stock to John F. Beals, as herein requested, will be denied, for the reason among others that the Commission has not been furnished with proper evidence to justify such issue. In regard to applicant's request to use twenty percent of the stock proceeds to pay commissions and expenses, we feel that such an expenditure is unreasonable. The order herein will permit the company to use twelve and one half percent of the proceeds for such purposes. The balance of the proceeds from the sale of stock must be deposited in a bank or banks and may be expended only for the purposes hereinafter authorized.

Applicant, as said, asks permission to issue \$100,000.00 of six percent twenty year bonds. It has entered into no agreement for the sale of the bonds and has submitted to the Commission neither a form of the bond nor a copy of its proposed deed of trust. We feel that it is proper for the company to issue not exceeding \$100,000.00 of bonds to pay in part the cost of its gas plant, provided it can sell enough stock to establish a reasonable equity for the bonds and that it submits in satisfactory form a deed of trust. We

will not authorize the issue of the bonds until we are furnished with satisfactory information showing that the company has sold at par \$50,000.00 or more of its stock and has on deposit in some bank or banks at least seventy-five percent of the selling price of such stock. No contracts for the purchase of material or the construction of the plant may be entered into by applicant until it has the aforesaid moneys on deposit. The order herein is of a preliminary nature.

If an applicant expects a final order in a proceeding of this kind it should come to the hearing prepared to submit a complete case. In this instance no engineer was called by applicant to testify in support of its estimated cost of the plant reported at \$145,121.00 or in support of its reported revenues and expenses. Such estimates were submitted by applicant and found reasonable by the Engineering Department of the Commission except that the Department reports the operating expense estimate too low. Applicant's secretary admitted the omission of certain items of expense. Neither a form of the bond, nor a copy of the deed of trust was submitted, nor was any competent evidence submitted in support of the request to issue stock to John F. Beals for services rendered.

#### ORDER

Tracy Gas Company, having applied to the Railroad Commission for permission to construct, maintain and operate an artificial gas plant, as indicated in the foregoing opinion, and for permission to issue not exceeding \$100,000.00 of common stock and not exceeding \$100,000.00 of six percent twenty year bonds, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that public convenience and necessity require and will require the construction, operation and maintenance of the gas plant referred to herein and that Tracy Gas Company

should at this time be permitted to issue not exceeding \$75,000.00 of its common capital stock subject to the provisions of this order, and that this application insofar as it involves the issue of \$25,000. additional stock and \$100,000.00 of bonds, should be held in abeyance, and that the money, property or labor to be procured or paid for by the issue of the stock herein authorized, is reasonably required by applicant and that the expenditures are not in whole or in part reasonably chargeable to operating expense or to income, therefore,

THE RAILROAD COMMISSION HEREBY DECLARES that hereafter, upon the filing of a certified copy of an ordinance of the City of Tracy granting to John F. Beals, his successors and assigns, a franchise to construct, operate and maintain an artificial gas plant; a properly executed assignment of said franchise to Tracy Gas Company; and a stipulation duly authorized by its Board of Directors declaring that Tracy Gas Company, its successors and assigns, will never claim before the Railroad Commission or any court or other public body a value for said rights and privileges in excess of the amount actually paid to the City of Tracy as the consideration for the grant of such franchise, which amount is represented by Tracy Gas Company to have been \$           ; the Railroad Commission will declare that public convenience require and will require the exercise by applicant of the rights and privileges granted to it by such ordinance, subject to such terms and conditions as the Railroad Commission may prescribe.

IT IS HEREBY ORDERED that Tracy Gas Company be, and it is hereby, authorized to issue and sell on or before October 1, 1927, for cash at not less than par \$75,000.00 of its common capital stock. Of the proceeds realized from the sale of such stock, an amount not exceeding twelve and one half percent may be expended by applicant to pay commissions and all other expenses incident to the sale of such stock. All remaining proceeds shall be deposited with a bank or banks and may be expended by applicant only for such par-

poses as the Commission will authorize by a supplemental order or orders.

IT IS HEREBY FURTHER ORDERED that Tracy Gas Company shall not enter into any contract for material or enter into any contract for the construction of its proposed gas plant until it has sold at least \$50,000.00 of the stock herein authorized to be issued and has on deposit with a bank or banks at least seventy-five percent of the selling price of said stock.

IT IS HEREBY FURTHER ORDERED that the authority herein granted to issue stock shall become effective upon the date hereof.

IT IS HEREBY FURTHER ORDERED that Tracy Gas Company shall keep such record of the issue, sale and delivery of the stock and bonds herein authorized and of the disposition of the proceeds as will enable it to file on or before the 25th day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order insofar as applicable, is made a part of this order.

IT IS HEREBY FURTHER ORDERED that the authority herein granted to construct, maintain and operate a gas plant, will become effective when applicant has filed the stipulation referred to herein, and when applicant has on deposit with a bank or banks at least seventy-five percent of the selling price of \$50,000. of stock.

DATED at San Francisco, California, this 20<sup>th</sup> day of December, 1926.

H. B. ...  
C. ...  
Edward ...  
Leon ...  
Thomas ...

Commissioners.