

Decision No. 18391

EXHIBIT

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SOUTH COAST GAS COMPANY,)
a corporation, for a permit to)
exercise franchise rights, for a)
certificate of public convenience)
and necessity and for a permit to)
sell its stock.)

Application No. 13724.

George L. Hampton, for applicant.

BY THE COMMISSION:

O P I N I O N

South Coast Gas Company asks the Railroad Commission to make an order; (a) declaring that public convenience and necessity require and will require applicant to exercise the rights and privileges obtained by Ordinance No. 312 of the City of Oceanside and to construct, maintain and operate an artificial gas plant at Oceanside; (b) authorizing the company to issue one thousand shares (\$100,000.00 par value) of common and eight hundred and fifty shares (\$85,000.00 par value) of seven percent cumulative preferred stock; (c) authorizing the company to sell such stock at par for cash and use twenty percent of the proceeds to pay the cost of selling the stock and the balance to acquire and construct the gas plant

referred to in this application; (d) and permitting the company to charge the rates referred to herein.

South Coast Gas Company was organized on or about March 18, 1927, with an authorized capital stock of \$200,000.00 divided into \$100,000.00 of common and \$100,000.00 of seven percent cumulative preferred. In regard to the company's preferred stock, the Articles of Incorporation provide as follows:-

(The nature of the preference given to said one thousand shares of preferred stock is that the holders thereof shall be entitled to receive, and the corporation shall be bound to pay out of any and all surplus or profits, whenever ascertained, cumulative dividends thereon at the rate of seven percent per annum, payable annually before any dividend shall be declared on the common stock.) Said preferred stock is subject to redemption at any time after the expiration of five (5) years from the date of the incorporation at One Hundred Five (\$105.00) Dollars per share.

It will be noted that the Articles of Incorporation are silent as to the extent to which the holders of preferred stock may participate in the distribution of the assets of the corporation in case of the sale of the corporation's properties or its liquidation and do not prohibit, except perhaps by implication, the payment of dividends on common stock at a time when there are accumulated unpaid dividends on the preferred stock. This Commission will not authorize the issue of preferred stock, subject to such conditions as are set forth in the company's Articles of Incorporation.

It appears that on November 10, 1926, the Board of Trustees of the City of Oceanside adopted an ordinance (No. 312) Exhibit "E", granting to Curtis E. Flint, his heirs, successors and assigns, the right to erect, lay, operate and maintain gas pipes and conduits on all the public streets, alleys, highways and public places of the City of Oceanside, for the purpose of carrying gas for light, heat and power along and upon all the public streets,

alleys, highways and public places of the City of Oceanside, for the period of time ending November 3, 1956. Under date of April 15, 1927, Curtis E. Flint assigned his rights and privileges under such ordinance to the South Coast Gas Company.

It is of record that applicant intends to construct an artificial gas plant which it reports will cost \$145,000.00, segregated as follows:-

Cost of construction as per contract between applicant and one E. A. MacGillivray, a copy of which is attached to the petition as Applicant's Exhibit "I"	\$127,500.00
Material for 200 additional services.	1,000.00
Real property.	6,000.00
Engineering and legal expenses incurred in the formation and completion of plant and distributing system.	2,500.00
Labor for installing 700 services @ \$2.00 per service	1,400.00
Franchise.	1,500.00
Working capital.	<u>5,100.00</u>
Total.....	<u>\$145,000.00</u>

The contract between applicant and E. A. MacGillivray was originally signed by Curtis E. Flint. Later the name of South Coast Gas Company was substituted for that of Curtis E. Flint. The contract describes in general terms the plant which E. A. MacGillivray has agreed to construct. It provides that payments shall be made as follows:-

\$35,000.00	upon the signing of the contract.
\$35,000.00	when material going into the plant and ground is delivered at Oceanside, California.
\$35,000.00	when the contract is completed; and the balance,
\$22,500.00	30 days after completion.

C. C. Brown, an assistant engineer for the Commission, testified at the hearing that the cost of the property which E. A. MacGillivray had agreed to construct and the materials which he had agreed to furnish under the contract should be about \$64,432.00. Subsequent to the hearing C. C. Brown and E. A. MacGillivray had a conference in regard to the provisions of the contract, with the result that C. C. Brown submitted a revised report in which he estimates the cost of the property at \$71,515.00. In preparing these estimates Mr. Brown has allowed for contingencies and for a contractor's profit on all work and equipment installed.

We do not believe that it is in the public interest for applicant to undertake to pay \$127,500.00 for work and material that should not cost more than \$71,515.00. While the Oceanside Chamber of Commerce and the Board of Trustees of the City of Oceanside urge (by letters dated prior to the hearing had on this application) that the Commission grant this application, they were not represented at the hearing. We have no objection to the construction of a gas plant at Oceanside provided it is built at a reasonable cost and financed in an ordinary business-like manner. To permit the construction under, or to recognize, the contract now before us in any way is likely to result in a request for rates that are unfair to the public. If such request is refused, which no doubt it would be, those who pay par for applicant's stock will not receive an adequate return on their investment. In this connection it might be said that applicant requests permission to issue \$159,375.00 to raise the \$127,500.00.

Regardless of the fact that payments may have been made on the contract for material purchased, we believe that this

application should be denied without prejudice. When one undertakes the construction of a public utility property, he should inform himself of the provisions of the Public Utilities Act and familiarize himself with the rules and regulations of the Commission before undertaking actual construction or obligating himself in any contractual manner.

While our action in this matter may result in a delay in the construction of a gas plant at Oceanside, it does not mean that the Commission will not authorize the construction of such a plant at that place provided a reasonable proposition is submitted. The view that we take of this matter makes it unnecessary to comment on applicant's other proposed expenditures; its rates or stock issue other than what has been said about the provisions of its Articles of Incorporation.

ORDER

South Coast Gas Company having applied for permission to construct an artificial gas plant and exercise the rights and privileges granted to it by Ordinance No. 312 of the City of Oceanside; to issue \$100,000.00 of common stock and \$85,000.00 of seven percent cumulative preferred stock, and to charge the rates to which reference has been made in the foregoing opinion, a public hearing having been held by Examiner Fankhauser and the Railroad Commission being of the opinion, for the reasons stated in the opinion which precedes this order, that this application should be denied without prejudice.

IT IS HEREBY ORDERED that this application be, and the same is, hereby denied. without prejudice.

DATED at San Francisco, California, this 25th
day of May, 1927.

Ernest A.

H. B. Prudig

C. Seavey

Thos. S. Rowlett

Commissioners.