

LEM

Decision No. 18684.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 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 auth-
 orizing the issue and sale of \$100,000.
 of its capital stock and \$100,000. of
 its first mortgage bonds to finance
 such contemplated improvements.

ORIGINAL

Application No. 13295

Rufus H. Kimball, for applicant.
 N. R. Sutherland, for Pacific Gas and Electric Company
 and Western States Gas and Electric Company.

BY THE COMMISSION:

SUPPLEMENTAL OPINION

Tracy Gas Company requests permission to exercise the rights and privileges granted it by Ordinance No. 114 of the City of Tracy, and by Ordinance No. 381 of the County of San Joaquin, to issue additional stock (\$25,000.00), to exercise a mortgage and/or deed of trust, and to issue and sell at 90 and accrued interest \$100,000.00 of six percent 30-year bonds, and expend proceeds obtained from the sale of stock and bonds.

By Decision No. 17759 dated December 20, 1926, as amended by Decision No. 17902, dated January 12, 1927, and by Decision No. 18498 dated June 10, 1927, the Commission declared that public convenience and necessity required the exercise by Tracy Gas Company of the rights and privileges granted it by Ordinance No. 112, passed by the Board of Trustees of the City of Tracy on February 3, 1927, and authorized the company to issue and sell \$75,000.00 of stock. In the original petition the company asked permission to issue \$100,000. of stock and \$100,000. of bonds. In regard to the bond issue,

the Commission in Decision No. 17769, says--

"It (applicant) has entered into no agreement for the sale of the bonds and 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. of bonds to pay in part the cost of its gas plant, provided it can sell enough stock to establish a reasonably equity for the bonds, and that it submit 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. or more of its stock and has on deposit with some bank or banks at least 75 percent of the selling price of such stock."

Applicant has submitted a statement showing that it has sold \$65,000.00 of the stock and that it has on deposit with the Bank of Italy the sum of \$50,000.00 from the sale of such stock. It has also submitted a copy of its proposed deed of trust and form of bond.

When this Commission authorized the issue of \$75,000.00 of stock (Decision No. 17769) and expressed the opinion that the company should be permitted to issue \$100,000.00 of bonds, it proceeded on the theory that the plant, including all organization and general and miscellaneous expenses, other than cost of selling stock and discount on bonds, would cost \$145,121.00. Applicant now submits a revised cost estimate of \$200,000.00 which includes \$17,500.00 for commissions to sell stock and \$10,000.00 of bond discount. At the hearing had before Examiner Satterwhite on July 30th, no witness familiar with the revised estimate was produced. Because of applicant's failure to produce a witness, we will not consider the revised cost estimate filed July 19th as part of the record in this proceeding and deny applicant's request to issue \$25,000.00 additional stock, for the reason that no evidence has been submitted to justify such issue.

Applicant has concluded to locate its generating plant outside the city limits of Tracy, and it has therefore become necessary for it to obtain a county franchise. The franchise heretofore obtained from the City of Tracy requires the company to use cast iron pipe if it constructed a low pressure system. It prefers, however,

not to construct its low pressure distributing system in the City of Tracy with cast iron pipe, and therefore has obtained a new franchise, Ordinance No. 114, which gives it the option to use cast iron pipe or steel and wrought iron pipe. Certified copies of both the city and county ordinances have been filed in this proceeding. At the hearing had before Examiner Satterwhite, the Pacific Gas and Electric Company and Western States Gas and Electric Company, a subsidiary which also serves gas in San Joaquin County, were represented but did not protest the granting of the requests of applicant, provided that said applicant did not seek permission to operate elsewhere than in the City of Tracy and the territory immediately adjacent thereto.

The Commission by Decision No. 17769, as amended, required that all the proceeds obtained from the sale of stock, except such amount as the order of the Commission allows to be expended to pay commissions and other expenses incident to the sale of the stock, shall be deposited with a bank or banks and expended only as hereafter authorized by the Commission by supplemental order or orders. We believe that the net proceeds which the company will realize from the sale of the bonds herein authorized to be issued, should likewise be deposited with a bank or banks and expended only as hereafter authorized by a supplemental order or orders.

On July 1st Tracy Gas Company requested permission to withdraw \$59,671.00 for the following purposes:-

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|---|--------------------|
| Railway siding from the So. Pacific line to the proposed gas plant | \$1,580.00 |
| Payment for the land, 3 acres, rights of ways and private roadway | 5,000.00 |
| For the drilling and equipping of water well, the pump and electric motor | 1,650.00 |
| Concrete foundations for the gas holder, lampblack pit and run, and foundations for all other machinery | 7,000.00 |
| For the building of a water reservoir | 1,250.00 |
| For the purchase of pipe, 5200 ft. 6" steel pipe, wrapped and dipped | 6,136.00 |
| 20,000 ft. 4" steel pipe, W. & D. | 13,395.00 |
| 25,000 ft. 2" pipe, also W. & D. | 5,810.00 |
| 50,000 ft. trenching and laying | 12,500.00 |
| Cost of welding pipes | 4,350.00 |
| Office furniture and equipment, stationery and printing | 1,000.00 |
| Total..... | <u>\$59,671.00</u> |

Before we will authorize the withdrawal of any money for the purchase of pipe, we desire to be advised from whom such pipe is being purchased, the condition of the pipe, (new or second hand) whether the same is being purchased under competitive bidding, and the terms and conditions of the purchase. The order herein will authorize the withdrawal of \$20,480.00 for the purposes stated in said order.

Applicant on August 3rd filed a revised copy of its mortgage and/or deed of trust which is in satisfactory form.

Tracy Gas Company asks permission to sell six percent 20-year bonds at 90 and accrued interest or on a basis of nearly seven percent. In our opinion the price at which the company asks permission to sell its bonds is too low and the order herein will authorize the sale of the same at not less than 92-1/2 percent of their face value and accrued interest.

THIRD SUPPLEMENTAL ORDER

Tracy Gas Company, having asked permission to exercise franchise rights and to issue stocks and bonds and expend the proceeds realized from the sale of stocks and bonds, a further hearing having been held and the Commission being of the opinion that public convenience and necessity require the exercise of said franchise rights and the construction and operation of a gas plant and system in Tracy and its environs, and that the issue of the additional \$25,000.00 of stock should be denied without prejudice and that the company should be permitted to issue \$100,000.00 of bonds, and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expense or to income, therefore,

THE RAILROAD COMMISSION HEREBY DECLARES that public convenience and necessity require the exercise by Tracy Gas Company of the rights and privileges granted by Ordinance No. 381 passed by the Board of Supervisors of the County of San Joaquin on June 13, 1927; and by Ordinance No. 114 passed by the Board of Trustees of the City of Tracy on July 26, 1927 and the construction, maintenance and operation by Tracy Gas Company of the gas plant and system described in this proceeding, provided that the rights and privileges granted by said Ordinance No. 381 may be exercised only insofar as it is necessary to construct and operate the gas plant referred to herein and distribute gas in the territory adjacent to the City of Tracy; and provided further that the authority herein granted to exercise franchise rights will not become effective until applicant has filed with the Commission a stipulation duly authorized by its Board of Directors declaring that it, its successors and assigns will never claim before the Railroad Commission or any court or other public body a value for the rights and privileges it is herein authorized to exercise in excess of the amounts actually paid (which amounts are to be stated in the stipulation) to the City of Tracy and the County of San Joaquin as the consideration for the grant of the franchises and has received from the Commission a supplemental order approving such stipulation; and provided further that if applicant does not within 45 days after that date hereof begin and thereafter diligently prosecute the construction of its proposed gas plant and transmission and distribution system, the permission herein granted to exercise franchise rights will be null and void.

IT IS HEREBY ORDERED that Tracy Gas Company be, and it is hereby, authorized to execute a mortgage and/or deed of trust substantially in the same form as that filed in this proceeding on August 3, 1927, provided that the authority herein granted to execute a mortgage and/or deed of trust is for the purpose of this proceeding only and is granted only insofar as this Commission has jurisdiction under the Public Utilities Act and is not intended

as an approval of such mortgage and/or deed of trust as to such other legal requirements to which said mortgage and/or deed of trust may be subject.

IT IS HEREBY FURTHER ORDERED that Tracy Gas Company be, and it is hereby, authorized to issue and sell on or before December 31, 1927 at not less than 92-1/2 percent of their face value and accrued interest \$100,000.00 of its first mortgage six percent 20-year bonds due July 1, 1947, provided that the authority herein granted to issue said bonds will become effective when applicant has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is \$100.00.

IT IS HEREBY FURTHER ORDERED that Tracy Gas Company shall deposit with the trustee under its mortgage and/or deed of trust such amount realized from the sale of its bonds as may be sufficient to pay the interest on such bonds due January 1, 1928. The remainder of the proceeds shall be deposited with a bank or banks and may be expended only for such purposes as the Railroad Commission will authorize by supplemental order or orders.

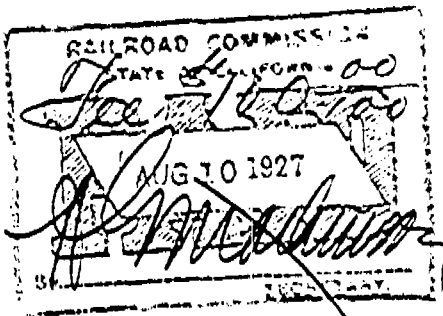
IT IS HEREBY FURTHER ORDERED that this application insofar as it involves the issue of \$25,000.00 of additional stock be, and the same is, hereby denied without prejudice.

IT IS HEREBY FURTHER ORDERED that Tracy Gas Company may expend \$20,480.00 obtained from the sale of stock for the following purposes;-

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| To construct railway siding from the Southern Pacific line to proposed gas plant, | approximately | \$1,580.00 |
| To pay for three acres of land, rights of ways, and private roadway, | approximately | 5,000.00 |
| To pay for drilling and equipping water well, pump and electric motor, | approximately | 1,650.00 |
| To pay for concrete foundations for gas holder, lampblack pit and run and foundations for all machinery, | approximately | 7,000.00 |
| To pay for building of a water reservoir, | approximately | 1,250.00 |
| To pay for office furniture and equipment, stationery and printing, | approximately | 2,000.00 |
| To pay the expenses incident to bond issue including attorney's fees and cost of acquiring franchises, | approximately | 3,000.00 |

IT IS HEREBY FURTHER ORDERED that Tracy Gas Company shall file with the Commission within thirty days after the execution of the mortgage and/or deed of trust referred to herein, two certified copies of said mortgage and/or deed of trust, and that said company shall keep such record of the issue and sale of the bonds herein authorized to be issued and sold 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.

DATED at San Francisco, California, this 4th day of August, 1927.



C. Seavey
Leon Whitell
Thos. Shover

Commissioners.