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Decision No. 18862.

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  
authorizing the issue and sale of  
\$100,000. of its capital stock and  
\$100,000. of its first mortgage bonds  
to finance such contemplated improve-  
ments.

Application No. 13295

Crittenden and Hench, by Bradford S. Crittenden,  
for Tracy Gas Company.

Rufus Kimball, for Bradford Kimball and Company.

BY THE COMMISSION:

SUPPLEMENTAL OPINION

In its supplemental petition filed in the above entitled matter the Tracy Gas Company asks the Commission to modify its Decision No. 18684, dated August 4, 1927, so as to permit the company to sell \$100,000.00 of its six percent 20-year bonds at not less than ninety percent of their face value and accrued interest, to issue additional stock in the amount of \$25,000.00, to use the proceeds obtained from the sale of the stock, the issue of which has heretofore been authorized, and from the sale of the bonds and from the stock herein authorized to construct the gas plant referred to herein and to approve a construction contract and the stipulation filed on September third.

The company has submitted a revised statement of its estimate of the cost of its proposed gas plant, which is as follows;-

Land . . . . .	\$5,000.00
Spur track . . . . .	1,331.00
Contract to build plant and distributing system(Exhibit B) . . . . .	136,000.00
Road to plant . . . . .	450.00
Electric pole line to plant . . . . .	520.00
Expenses of bond issue, cost of franchises, etc. . . . .	5,000.00
Administrative expenses, that is, services of Leon Melekov, the secretary and general manager of the company, since its organization to August 31 . . . . .	5,400.00
Travelling expenses of officers of the company in attending to business of company . . . . .	612.95
State taxes paid by company . . . . .	61.25
Miscellaneous office expenses, etc. . . . .	1,220.35
Discount on bonds . . . . .	10,000.00
Commissions for selling stock . . . . .	17,500.00
Working capital . . . . .	<u>16,894.45</u>
Total . . . . .	<u>\$200,000.00</u>

At the hearing had on November 26, 1926, on the original petition in this proceeding, the company represented the cost of its plant at \$145,121.00. To finance such cost the Commission authorized the issue of \$75,000.00 of common stock and \$100,000.00 of six percent 20-year bonds. The stock is to be sold for not less than par and the bonds at not less than 92-1/2 percent of their par value and accrued interest. The Commission's decision permits the company to use not exceeding 17-1/2 percent of the proceeds obtained from the sale of the stock to pay commissions and all other expenses incident to the sale of the stock.

The company has submitted a proposed contract(Exhibit "B") with E. A. MacCillivray, who agrees to construct the company's generating plant, transmission and distributing system for \$136,000.00. This contract price includes an allowance of \$4,000.00 for engineering and supervision and \$2,250.00 for premium on the contractor's bond, to which reference will be made hereafter. The contractor agrees to pay the salary of John F. Beals, the company's engineer, during the period of construction, which is estimated at not to exceed 120 days.

The contract price is to be paid as follows:-

- a. 250 shares common stock of Tracy Gas Company at \$82.50 per share in lieu of \$20,625.00 and \$15,375.00 cash upon the signing of the contract.
- b. \$15,000.00 when the 6", 4" and 2" mains have been laid in streets or alleys.
- c. \$20,000.00 when all machinery and material to go into the plant have been fabricated and delivered on the premises of the owner.
- d. \$30,000.00 when the contract is fulfilled and the plant completed.
- e. \$35,000.00 thirty-five days after completion and acceptance of the plant.

The company has filed its plans and specifications in accordance with which the contractor is to construct its plant, such plans and specifications having been filed as applicant's Exhibits Nos. 7 and 9. A copy of the proposed contractor's bond (Exhibit No. 6) for \$100,000.00 has also been filed. The execution of this bond and the filing of a certified copy thereof with the Commission will be a condition precedent to the expenditure of any moneys for the payment of the contract price.

The contract price plus the cost of land, spur track, road, electric line and miscellaneous expenses total about \$144,531.00. This includes, as stated, \$4,000.00 for engineering and supervision and \$2,250.00 for premium on the contractor's bond. In addition, the company asks that it be allowed to use \$16,894.45 for working capital, \$5,400.00 to pay Leon Melekov, the secretary and general manager of the company, for services rendered from November 1, 1926 to August 31, 1927, to pay travelling expenses in the amount of \$612.95; to use 17-1/2 percent of the proceeds obtained from the sale of stock to pay commissions instead of using such amount to pay commissions and all expenses incident to the sale of the stock, and \$5,000.00 to pay expenses in connection with the bond issue and acquiring franchises. It would appear from the company's state-

ment that the amount which the company has allocated for working capital is the difference between the amount which it will realize from the sale of its proposed stock and bond issue and the expenditures, other than working capital, itemized in the petition.

There was, however, testimony submitted that the company has need for the working capital in conjunction with the purchase and sale of gas appliances. It does not appear to us that we are justified in authorizing the company to establish a working capital of \$16,894.45 through the issue of stocks or bonds. The Commission has heretofore in certain rate cases allowed working capital in an amount equivalent to approximately two months operating expenses.

In this instance the operating expenses of the company are estimated at approximately \$1,784.00 per month. Assuming such expenses to be correct, we will not allow more than \$3,600.00 for working capital.

The Commission in its Decision No. 17769, dated December 20, 1926, as amended by Decision No. 17902, dated January 12, 1927, allowed the company to use of the proceeds realized from the sale of its stock, the issue of which was authorized by said decision, 17-1/2 percent to pay commissions and all other expenses incident to the sale of such stock. It now appears, however, that expenses in addition to that heretofore allowed have been incurred and that the company now desires to pay such expenses through the issue of additional stock and use the 17-1/2 percent to pay commissions only. It further appears that the Board of Directors of the company at a meeting held on May 16, 1927, voted that a salary of \$600. per month from November 1, 1926 should be paid to the secretary and general manager, Leon Melekov. It further appears that the secretary of this company was and is now in charge of the sale of the stock by the company. If this company undertakes to pay the salary to which reference has been made or the expenses, \$612.95, referred to above, it must pay the same out of the 17-1/2 percent allowed for commissions and expenses incident

to the sale of the stock, or in some manner other than the issue of stock, bonds or other evidences of indebtedness authorized by this Commission.

Exclusive of the amount allowed for stock selling expenses and commissions, it appears to us that the Tracy Gas Company should be permitted to raise approximately \$153,200.00 from the sale of stock and bonds to finance the cost of constructing its proposed gas plant. The Commission has heretofore, by Decision No. 17769, authorized the issue of \$75,000.00 of stock. From the sale of the \$100,000.00 of bonds the company will realize \$90,000.00. Of this, however, \$3,000.00 is to be reserved to pay interest during construction. The actual cash which the company will thus receive from the sale of its bonds available for construction purposes will be \$87,000.00. Deducting the \$87,000.00 from the \$153,200.00 leaves a balance of \$66,200.00 to be obtained from the issue of stock. Assuming that the stock will be sold to net the company \$82.50 per share for construction purposes, the company will have to issue 800 shares (\$80,000.00 par value) to realize \$66,200.00. As stated, the Commission has heretofore authorized the issue of \$75,000.00 of stock. The difference between \$80,000.00 and the \$75,000.00 amounts to \$5,000.00; the amount of stock which will be authorized by the order herein.

By Decision No. 18684, dated August 4, 1927, the Commission declared that public convenience and necessity require the exercise by Tracy Gas Company of the rights and privileges granted by Ordinance No. 381 by the Board of Supervisors of the County of San Joaquin by Ordinance No. 114, passed by the Board of Trustees of the City of Tracy, provided, among other things, that the company file a stipulation duly authorized by its Board of Directors declaring 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 authorized to exercise, in excess of the amounts actually paid for such rights and privileges. Pursuant

to that provision, the company has filed a stipulation in which it reports the cost of the franchise obtained from the City of Tracy at \$25.00 and the cost of the franchise obtained from the County of San Joaquin at \$50.00. We find the stipulation to be in satisfactory form.

The authority granted by Decision No. 17769 to issue stock expires on October 1, 1927. The order herein will extend such authority to March 1, 1928.

#### FOURTH SUPPLEMENTAL ORDER

Tracy Gas Company having asked the Commission to modify its order in Decision No. 18684, dated August 4, 1927, as indicated in the foregoing opinion, and to issue \$25,000.00 of additional stock, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that the company should be permitted to issue additional stock in the amount of \$5,000.00 and that the supplemental petition that Tracy Gas Company filed on September 3rd in the above entitled matter should be granted, to the extent that it affirmatively appears in this supplemental order, that the money, property or labor to be procured or paid for by the issue of the stock is reasonably required by the company, and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED as follows:-

1. The Commission's order in Decision No. 18684, dated August 4, 1927, is hereby amended so as to permit Tracy Gas Company to issue and sell at not less than 90 percent of their face value and accrued interest, \$100,000.00 of its six percent first mortgage 20-year bonds due July 1, 1927.

2. Tracy Gas Company may issue and sell at not less than par, on or before March 1, 1928, \$5,000.00 par value of stock and use of the proceeds obtained from the sale of such stock, an amount not exceeding 17-1/2 percent of the par value of the stock sold to pay commissions and all other expenses incident to the sale of the stock. The remainder of the proceeds shall be deposited with a bank or banks and may be expended only for the purposes hereinafter indicated. Said \$5,000.00 of stock is in addition to the \$75,000.00 of stock authorized by Decision No. 17769, dated December 20, 1926.

3. Tracy Gas Company may execute a contract for the construction of its proposed gas plant, transmission and distribution system in substantially the same form as the contract filed in this proceeding as Exhibit "B", provided that no payments may be made under said contract until there has been filed with the Commission a certified copy of a contractor's bond substantially in the same form as the bond filed in this proceeding as Exhibit No. 6; and provided further, that said plant, transmission and distribution system be constructed in accordance with the drawings, plans and specifications filed at the hearing had on September 20, 1927.

4. The time within which Tracy Gas Company may issue and sell the stock authorized by the order in Decision No. 17769, dated December 20, 1926 be, and the same is hereby, extended to March 1, 1928.

5. Tracy Gas Company may use not exceeding \$153,192.60 obtained from the sale of stock and bonds, the issue of which the Commission has authorized in this proceeding, for the following.

purposes and none other;-

To pay cost of land and right of way.....	\$5,000.00
To pay cost of spur track . . . . .	1,331.00
To pay contract price . . . . .	136,000.00
To pay cost of pole line . . . . .	530.00
To pay expenses of bond issue, including attorney's fees and cost of acquiring franchises and ex- penses of proceedings before Railroad Commis- sion . . . . .	5,000.00
To pay cost of road . . . . .	450.00
To provide working capital . . . . .	3,600.00
To pay miscellaneous expenses . . . . .	1,281.60
	<hr/>
Total.....	<u>\$ 153,192.60</u>

Provided that 250 shares of said stock instead of the net proceeds from the sale of said stock, may be delivered to E.A. MacGillivray at \$62.50 per share as part payment of his contract price (Exhibit B).

6. The accrued interest on the bonds and not exceeding \$3,000.00 obtained from the sale of the bonds may be used, if necessary, to pay interest during construction. Any amount not needed for such purposes may be expended only for such purposes as the Commission will hereafter authorize.

7. The supplemental petition of Tracy Gas Company filed on September 3rd, as far as it involves the issue of \$20,000.00 par value of stock, is dismissed without prejudice.

8. Tracy Gas Company shall keep such record of the issue, sale and delivery of the stock 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.

9. The Commission hereby finds that the stipulation filed September 3, 1927, is in satisfactory form.



10. The Commission's order in Decision No. 17769, dated December 20, 1926, its Decision No. 17902, dated January 12, 1927, its Decision No. 18498, dated June 10, 1927, and its order in Decision No. 18684, dated August 4, 1927, shall remain in full force and effect, except as modified by this Fourth Supplemental Order.

DATED at San Francisco, California, this 3<sup>rd</sup> day of October, 1927.

Ernest A. Smith  
Edmund J. Conroy  
Leon B. Whitely  
Thos. S. Dutton  
M. A. Carr

Commissioners.