

LBM

Decision No. 21594.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
CONSUMERS GAS COMPANY
(a corporation) for certificate of
public convenience and necessity to
furnish gas to the Cities of Los
Banos, Dos Palos, Gustine in the
County of Merced, State of California,
and to the Towns of Newman and Crows
Landing, and City of Patterson in the
County of Stanislaus, State of Cali-
fornia, and for an order authorizing
the issue and sale of certain of its
securities to finance such contem-
plated improvements.

ORIGINAL

Application No. 15604.

Edward Schary and F. Emerson Hoar, for applicant.

C. P. Cutten, for Pacific Gas and Electric Company.

BY THE COMMISSION:

OPINION

In this proceeding the Railroad Commission has been asked to make an order declaring that public convenience and necessity require Consumers Gas Company, a corporation, to engage in the business of transmitting, distributing, supplying and selling natural gas for domestic, commercial and industrial purposes in and about the cities or towns of Los Banos, Dos Palos and Gustine, in the County of Merced, and Newman, Crows Landing and Patterson, in the County of Stanislaus, and authorizing Consumers Gas Company to issue and sell \$150,000.00 of common stock to net \$121,250.00, \$100,000.00 of seven percent preferred stock to net \$90,000.00, and \$487,500.00 of first

mortgage six percent twenty year bonds to net \$438,750.00; to finance the cost of its proposed gas system.

Consumers Gas Company is a corporation organized on or about June 26, 1928, under the laws of the State of California, for the purpose of engaging in the business of supplying gas for domestic and commercial consumption within the state. The territory it now proposes to serve is included, according to a map attached to its Exhibit "C", within those portions of Stanislaus and Merced Counties lying west of the San Joaquin River and between the river and, generally speaking, the line of the Union Oil Company, which traverses the two counties, the whole proposed service area comprising a strip approximately fifty miles in length and from about five to about fifteen miles in width, following in a general way the line of the Southern Pacific on the west side of the river. The principal communities, it appears, are the incorporated cities of Patterson and Newman and the unincorporated town of Crows Landing, in Stanislaus County, and the incorporated cities of Los Banos and Gustine and the unincorporated town of Dos Palos in Merced County. The total population of the district is estimated by applicant at about 10,000.

The region proposed to be served by applicant is principally agricultural in its nature, with a few industries, chiefly creameries, and manufactories of milk products, near the centers of population. No gas service is given at present, although recently Pacific Gas and Electric Company by Decision No. 21511, dated September 3, 1929, was authorized to construct a transmission line for the transportation of natural gas to the Bay Region from Kettleman Hills, which line will pass through Stanislaus and Merced Counties near the western boundary of applicant's proposed service area. At the hearing held in the present proceeding no protest was made to the granting of applicant's request. Mr. C. P. Cutten, representing Pacific Gas and Electric Company, entered an appearance, stating that the Pacific

Gas and Electric Company would serve Consumers Gas Company with natural gas under such terms and conditions as the Commission might think to be reasonable and proper; or ~~it~~ serve the district itself in the event the Commission concluded that it could do so to the better convenience of the public. Pacific Gas and Electric Company, however, has made no request for a certificate to conduct such operations and to date has not obtained franchises from the various cities.

Consumers Gas Company has obtained franchises from the Counties of Merced and Stanislaus and the Cities of Patterson, Newman, Gustine and Los Banos. To enable it to make deliveries of gas it proposes to purchase its supply from a transmission line passing through its territory and to construct transmission tap lines to each of the several communities. Its plans, as disclosed in its Exhibit "C" and in supporting oral testimony, provide for six lines having an aggregate length of about 37 miles, partly three inch and partly four inch pipe, to each of the communities named, that is, Patterson, Crows Landing, Newman, Gustine, Los Banos and Dos Palos, where terminal stations will be located. The distribution system proposed is a combination medium and low pressure system for the thickly populated areas and a high or medium pressure system for rural service.

The cost of applicant's proposed system is estimated by F. Emerson Hoar, a consulting engineer, appearing as a witness for applicant, at \$667,110.00. Mr. J. E. Spelce, one of the Commission's assistant engineers, made a survey of the territory and estimated the cost of constructing a gas system to serve the territory which he believes should receive service, at \$449,712.00. The record indicates that Mr. Spelce has excluded certain rural territory included by Mr. Hoar, confining his study to the more densely populated districts in the area under discussion, and to a great extent, has con-

sidered pipe of smaller dimensions.

The estimates of the two engineers are segregated as follows;-

ITEM	F.E.HOAR (Exh. C)	J.E.SPELCE (Exh. 9)
A. TANGIBLE FIXED CAPITAL:		
Transmission system . . .	\$282,980.00	\$ 210,712.00
Distribution system . . .	331,620.00	198,350.00
General and miscellaneous	21,430.00	15,900.00
Total tangible fixed capital.	\$636,030.00	\$ 424,962.00
B. INTANGIBLE FIXED CAPITAL:		
Organization	\$ 3,000.00	\$ 3,000.00
Franchises	2,500.00	2,500.00
Preliminary engineering, etc.	6,500.00	6,500.00
Total intangible fixed capital:	\$ 12,000.00	\$ 12,000.00
C. WORKING CAPITAL, etc.		
Materials and supplies . . .	\$ 12,720.00	\$ 8,500.00
Cash	6,360.00	4,250.00
Total working capital, etc.	\$ 19,080.00	\$ 12,750.00
TOTAL INVESTMENT	\$667,110.00	\$449,712.00

It appears that Mr. Spelce has used applicant's engineer's estimate of intangible capital. In connection with the item of franchises applicant has filed, as Exhibit No. 7, a statement purporting to show actual costs of \$2,260.50 in obtaining its six franchises. An analysis shows that this figure includes \$1,067.50 representing the amounts paid the political subdivisions plus advertising costs, \$50.00 for surety bonds, \$900.00 for attorney's fees and \$243.00 for railroad fare. In our opinion, there should be included as the cost of the franchises only the amounts actually paid to the political subdivision, including advertising costs, which in this case aggregate \$1,067.50. The other items, being expenses in connection with the acquisition of the franchises, amounting to about \$1,200.00, should be considered as organization expenses. It will be observed, in this connection, that applicant's engineer sets up additional organization expenses of \$3,000.00 and preliminary engineering and similar expenses of \$6,500.00. There has also been included by both engineers in the

estimated transmission and distribution investment, for overheads, amounts equal to approximately fifteen percent of the non-landed capital.

Mr. Hoar estimates that at the end of the first year of operation, 1906 consumers would be served who would consume 632,732,900 cubic feet of gas and produce an annual gross revenue of \$249,494.00, whereas Mr. Spelce estimates 1232 consumers using 87,340,000 cubic feet of gas and producing an annual gross revenue of \$73,920.00. The number of consumers are segregated to the various communities as follows:-

City or Town	F. E. Hoar			J. E. Spelce		
	:Domestic:	:Comm'l and:Industrial:	: Total	:Domestic:	:Comm'l and:Industrial:	: Total
Dos Palos	: 223	: 28	: 251	:: 126	: 29	: 155
Los Banos	: 670	: 85	: 755	:: 317	: 68	: 385
Gustine	: 236	: 30	: 266	:: 146	: 26	: 172
Newman	: 270	: 35	: 305	:: 214	: 47	: 261
Crow's Land:	:	:	:	::	:	:
ing	: 50	: 8	: 58	:: 24	: 16	: 40
Patterson	: 238	: 33	: 271	:: 176	: 43	: 219
TOTAL.....	: 1687	: 219	: 1906	:: 1003	: 229	: 1232

Mr. Hoar estimated that the domestic consumers would take 54,452,000 cubic feet of gas and the commercial and industrial 578,280,000 cubic feet. Mr. Spelce estimated sales of 30,090,000 cubic feet to domestic consumers and of 57,250,000 cubic feet to the other classes.

The cost of obtaining gas was not known to either engineer at the times of the hearings in this proceeding. Mr. Hoar estimated the operating expenses, exclusive of cost of gas, and taxes and uncollectible bills, at \$69,480.00. Mr. Spelce presented a study of operating revenues and expenses including gas purchased at various assumed prices. His study shows the following:-

I T E M	Gas purchased at rate of			
	15¢ per M.C.F.	20¢ per M.C.F.	25¢ per M.C.F.	30¢ per M.C.F.
Cost of gas	\$14,556.	\$19,408.	\$24,260.	\$29,112.
Operating costs.....	37,188.	37,188.	37,188.	37,188.
Taxes	5,540.	5,540.	5,540.	5,540.
Uncollectibles.....	740.	740.	740.	740.
TOTAL.....	\$58,024.	\$62,876.	\$67,728.	\$72,580.
Gross revenue.....	73,920.	73,920.	73,920.	73,920.
Net for return.....	\$15,896.	\$11,044.	\$ 6,192.	\$ 1,340.

Percent return on estimated investment of \$449,712.	3.54	2.46	1.37	.30
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An analysis of the estimates here submitted shows an investment per consumer of \$350.00 and annual revenue per consumer of \$130.00 using Mr. Hoar's figures; and an investment per consumer of \$365.00 and annual revenue per consumer of \$60.00, using Mr. Spelce's figures. The record shows that Mr. Hoar estimates a considerably larger volume of industrial sales than does Mr. Spelce, his Exhibit No. 10 showing estimated annual sales of 125,000,000 cubic feet of gas to Libby, McNeil & Libby, at Patterson; 125,000,000 cubic feet to the Carnation Milk Company; and 100,000,000 cubic feet to the California Milk Products Company, both at Gustine. Representatives of the two latter companies, called as witnesses, testified that they would use gas for fuel only in the event it would cost less than oil, the fuel now used. The cost of gas to the consumer will depend, of course, on the price paid by applicant, and until this price is determined, it cannot be ascertained whether applicant will obtain the industrial business in the quantity estimated by its engineer. As the record now stands, we are not at all assured that it will.

Our review of the record herein leads us to believe that applicant has been too liberal in its estimates of the number of consumers it might attach to its system and the revenues to be re-

ceived, and raises considerable doubt in our minds whether it can conduct operations profitably with a system as extensive as applicant proposes. While it is true the testimony of a number of witnesses indicates that a certain public convenience will be served by the installation and operation of applicant's system, as proposed, such testimony is extremely general in its nature. We do not believe that it would be in the public interest to authorize applicant to operate and to issue securities to the extent proposed when it does not appear to us, clearly, that the territory will support such an extensive gas system and produce sufficient revenue to enable the company to meet its fixed charges and pay some return on its outstanding securities.

We suggest, therefore, that applicant, at the outset, confine its operations to the four largest centers of population and industry; namely, Los Banos, Gustine, Newman and Patterson, and the order herein will so provide. The question of service to the other localities referred to in the application can be held in abeyance until such time as applicant has passed the development stage and placed its business and operations on a financially sound basis and put itself in a position to make a more positive, convincing showing. We believe that applicant should provide initially for service to the urban areas and the more thickly settled territory immediately adjacent thereto.

In applicant's proposed rules and regulations, filed as an amendment to its Exhibit "C", ~~wherein~~ provision is made for the installation by the company of extensions of not over 100 feet in length for each consumer who will agree to use gas for a period of one year, and for extensions by the company in excess of 100 feet, but not over 400 feet, for each consumer, if the consumer will advance the cost of extending the main in excess of 100 feet for each consumer, the amounts so to be advanced, to be returned, on the basis of the cost of 100

feet of the main so extended for each consumer subsequently connected to the original extension within a period of ten years, provided, however, that when in the opinion of the company the maximum period within which refunds may be made should be less than ten years, the company, subject to the approval of the Railroad Commission, may fix such shorter maximum period as may be just and reasonable. The rules provide that the company will not be required to make extensions in excess of 400 feet per consumer. These rules for extensions are satisfactory and applicant should follow them in taking on its consumers.

Maps of each community showing the proposed location of the distribution lines have been filed in this matter. From an examination of these maps and of the estimated construction costs submitted by Mr. Spelce, in his Exhibit No. 9, and in oral testimony, it occurs to us that the cost of the four transmission lines to reach the four cities should approximate \$120,000.00, the distribution lines \$168,000.00 and the general capital \$12,000.00, making a total for the tangible capital of \$300,000.00. Adding \$1,067.00, representing the cost of obtaining franchises, \$9,500.00 for organization and preliminary engineering expenses, (applicant's own estimates) and \$9,000.00 for working capital, results in a total investment of approximately \$320,000.00.

In considering the financing of the project it will be observed that applicant in its petition proposed a set-up of \$737,500.00 of securities, of which about 67 percent would be bonds, 13 percent preferred stock and 20 percent common stock. We are unable to approve such a structure. It has been our policy, except under extraordinary conditions, to authorize the issue of bonds in amounts not exceeding sixty percent of the cost or reasonable value of properties acquired, and we do not believe that we should deviate from such policy in this case. Nor do we believe that we should authorize applicant, at this time, to issue preferred stock. Such preferred stock as applicant proposes to issue, bears dividends at the rate of

seven percent per annum cumulative from the date of issue and it may well happen in the development of new territory, such as here proposed, that dividends will not be earned during the first few years of operation, (in which case there would result an accumulated dividend to be met in future years before the purchasers of the common stock can receive any returns on their investment. Further, it appears that the preferred stock will be distributed generally and while it is true that dividends on preferred stock are not fixed charges of the company, yet sometimes purchasers of preferred stock believe, or are led to believe, that such dividends will be paid regularly. In our opinion, however, dividends on stock at the outset are by no means assured and accordingly, for the reasons stated herein, we do not believe that the issue of preferred stock at this time is in the public interest. We will therefore limit our authorization to bonds and common stock.

Applicant requests permission to sell its bonds at not less than 90 percent of face value and the common stock at 80. The bond price, it appears from the testimony of Edward Schary, its president and attorney, is the net price to the company after discount and all expenses incident to the issue, such as engraving costs, trustees' and recorders' fees, etc. It is planned that the bonds will be sold to the public, but that the common stock will be purchased by the five directors of the company who, the testimony shows, are willing to purchase such stock at such price as the Commission may fix. Under these circumstances we do not see the necessity of allowing a discount on the sale of the common stock. The order herein accordingly will authorize the issue and sale of \$190,000.00 of bonds at not less than 90 percent of face value plus accrued interest and \$150,000.00 of common stock at not less than par. These prices will

yield the company \$321,000.00.

The issue of \$190,000.00 of six percent bonds will result in annual interest charges of \$11,400.00. Mr. Spelce estimates, as shown in Exhibit No. 9, that there will be in the four cities, 853 domestic consumers and 184 commercial and industrial consumers; a total of 1037, who should produce an annual gross revenue of \$62,220.00, assuming an average revenue of \$60.00 per consumer. The exhibit shows that he estimates average sales of 30,000 cubic feet to each of the domestic consumers and 250,000 cubic feet to the other consumers. The number of consumers estimated will thus call for 71,590,000 cubic feet of gas. With an allowance of ten percent for gas not accounted for, the annual cost to the company of its supply of gas would amount to \$11,812.00, if purchased at the rate of fifteen cents per M.C.F.; to \$15,750.00, if purchased at the rate of twenty cents per M.C.F.; to \$19,687.00, if purchased at the rate of twenty-five cents per M.C.F.; and to \$23,624.00, if purchased at the rate of thirty cents per M.C.F.. Mr. Spelce estimates transmission expenses at the rate of 2.5 percent of the cost of the transmission capital, distribution expenses at the rate of 4 percent of the distribution capital and commercial and new business, general and miscellaneous expenses at the rate of \$8.00 per consumer. Upon these bases the operating costs, excluding depreciation, would amount to \$29,828.00, using the fifteen cent gas, to \$33,766.00, using the twenty cent gas, to \$37,703.00, using the twenty-five cent gas, and to \$41,640.00, using the thirty cent gas. Deducting these estimated costs from the estimated gross revenue of \$62,220.00 it appears that applicant should be able to meet its interest requirements on \$190,000.00 of bonds. Making some allowance for depreciation and taxes, it would seem that it could earn some return, however small, on its common stock. Ordinarily we might not be inclined to

authorize the issue of common stock under the conditions indicated in this proceeding, but if applicant's incorporators and stockholders are willing to put their own money into the project, and hold the common stock, as the record here indicates, we do not believe that we should withhold from them, on that account, permission to operate, limited as set forth herein, or deprive the residents of the several communities, of gas service.

The company has not filed a copy of the mortgage or deed of trust securing the payment of the proposed bonds. This instrument must be filed and its execution authorized before the bonds can be issued. In the order following, such authorization is required before the authority to issue bonds will become effective. Other conditions such as are customarily made in matters of this nature, and such as appear proper in this particular proceeding, are also included.

ORDER

Consumers Gas Company having applied to the Railroad Commission for an order declaring that public convenience and necessity require it to engage in the business of transmitting, distributing, supplying and selling gas in and about the Cities of Los Banos, Dos Palos, Gustine, Newman, Crows Landing and Patterson, and for an order authorizing it to issue and sell \$487,000.00 of bonds, \$150,000.00 of common stock, and \$100,000.00 of preferred stock, and public hearings having been held before Examiner Williams, and the Railroad Commission being of the opinion that applicant should be authorized to operate in and about the Cities of Los Banos, Gustine, Newman and Patterson, and to issue not exceeding \$190,000.00 of bonds and \$150,000.00 of common stock, and being of the opinion that the money, property or labor to be procured or paid for through such issue is

reasonably required for the purposes specified herein, which purposes are not in whole or in part reasonably chargeable to operating expense or to income, and that this application insofar as it involves the issue of \$297,500.00 of bonds and \$100,000.00 of preferred stock, should be denied without prejudice;

THE RAILROAD COMMISSION HEREBY DECLARES, that public convenience and necessity require, and will require, Consumers Gas Company to engage in the business of transmitting, distributing, supplying and selling gas for domestic, commercial and industrial purposes in the cities of Los Banos and Gustine in the County of Merced, and Newman and Patterson in the County of Stanislaus, and in the territory immediately adjacent thereto, and require and will require the exercise by Consumers Gas Company of the rights and privileges granted by the ordinances passed by the Boards of Trustees of the Cities of Los Banos, Gustine, Newman and Patterson, and the ordinances granted by the Boards of Supervisors of the Counties of Merced and Stanislaus, provided that said rights and privileges granted by the two latter franchises may be exercised only in the territory immediately adjacent to the cities referred to herein, and in the territory immediately adjacent to the transmission lines which applicant must construct, to enable it to transmit gas to said cities and territory adjacent thereto; and provided further, that applicant shall file with the Railroad Commission for approval 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 said rights and privileges in excess of the amounts actually paid as the consideration for the granting of said franchises, which amounts shall be stated; and

IT IS HEREBY ORDERED that a certificate in accordance with the foregoing declaration be, and it hereby is, granted to Consumers Gas Company.

IT IS HEREBY FURTHER ORDERED, that Consumers Gas Company be, and it hereby is, authorized to issue and sell, on or before March 31, 1930, not exceeding \$190,000.00 of its first mortgage six percent bonds, at not less than ninety percent of their face value plus accrued interest, net, and \$150,000.00 of its common capital stock at not less than par.

The authority herein granted is subject to the following conditions:-

1. Applicant shall deposit the proceeds to be received through the issue and sale of the stock and bonds herein authorized, in a special bank account and expend them only when authorized by the Commission in supplemental orders. To obtain such supplemental orders, applicant shall file with the Commission complete plans and specifications covering its proposed construction work. In the event it lets any of its construction work to contractors it shall do so upon competitive bidding.
2. The authority herein granted to issue bonds will become effective when applicant has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is One Hundred and Ninety (\$190.00) Dollars, and when the Commission, by supplemental order, has authorized the execution of a mortgage or deed of trust to secure the payment of said bonds, and when applicant has on deposit the proceeds from the sale of its common capital stock or has expended such common stock proceeds for purposes authorized by the Commission.
3. The authority herein granted to issue stock will become effective twenty days from the date hereof.

4. Applicant 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 application insofar as it involves the issue of \$297,500.00 of bonds and \$100,000.00 of preferred stock, be, and it hereby is, denied without prejudice.

DATED at San Francisco, California, this 23rd day of September, 1929.

John S. Lundy

Chas. J. ...

Leon ...

Commissioners.

Fee \$190 ⁰⁰/₁₀₀

A. ...

Fee # ...

I dissent. The Pacific Gas and Electric Company should supply this whole territory. They can give better service and lower rates and can finance much more cheaply than the applicant.
E. W. ...
Commissioner.