

ORIGINAL

Decision No. 1113

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application
of C. A. ERWIN for authority to
convey to Winters Gas Company a
gas franchise and of Winters Gas
Company for a certificate of public
convenience and necessity and for
an order authorizing the issue of
stock.

Application No. 807.

Welton J. Phillips for applicant.
Guy V. Gibbs, City Attorney, for town of Winters.

THELEN, Commissioner.

OPINION.

This is an application on the part of C. A. ERWIN for authority to assign to Winters Gas Company a certain franchise for the manufacture and delivery of gas in the town of Winters, and on the part of Winters Gas Company for a certificate of public convenience and necessity and for authority to issue its capital stock in the amount of \$25,000, as will hereinafter appear in greater detail.

The town of Winters is located in Yolo county, on a branch line operated by the Southern Pacific Company between Elmira and Rumsey. The evidence shows that the town has a population of some 2,000 persons. It consists principally of five parallel streets, each of which is about three quarters of a mile long. The testimony shows that there are about 269 private houses in the town and about 25 business houses. Winters is at present being supplied with electric energy by the Pacific Gas & Electric Company, but is without gas. The testimony shows that the inhabitants are desirous of securing gas and that there is considerable need for this commodity, particularly during the summer months.

On November 11, 1913, the Board of Trustees of Winters

by Ordinance No. 119, granted to C. A. Erwin, his successors and assigns, for the period of 25 years, the right to use the public streets, alleys and thoroughfares of the town for the purpose of laying down pipes and conduits therein for the delivery of gas for lighting, heating and other domestic purposes, and also the right to erect within the town a plant for the manufacture of gas. The franchise contains the usual provisions of the Broughton Act with reference to the payment to the town of Winters after five years ^{annual} of 2% annually of the gross/receipts arising from the operation of the franchise. The ordinance further provides that the main pipes or conduits shall be laid at a depth of not less than 24 inches below the level of the street on Railroad Avenue and that the lateral mains or conduits in all side streets and alleys shall be laid at a depth of not less than 16 inches below the level of the streets. The ordinance further provides that the price of gas shall be \$1.50 per thousand feet, with a minimum of 75¢ per month. This latter provision is, of course, subject to change by competent public authority. Mr. Erwin now desires to transfer this franchise, at cost, to Winters Gas Company, which company he has organized for the purpose of taking over the franchise and operating thereunder.

As provided by Section 50 of the Public Utilities Act, application has been made for a certificate of public convenience and necessity authorizing the exercise by Winters Gas Company of the rights conferred by the franchise and for authority to construct and operate the plant.

Winters Gas Company was incorporated on October 8, 1913. Its articles confer upon the Company general power to conduct a public utility business in the manufacture and sale of gas. The amount of capital stock authorized consists of \$50,000, divided into 5,000 shares of the par value of \$10.00 each. No shares of stock have as yet been issued, although the corporation would have the right to issue one share to each of its directors to qualify them. The Company now asks authority to issue its capital stock of the par value of \$25,000, as follows:

1. To pay the expenses of incorporation and for erecting and equipping a gas plant in Winters and laying the necessary mains and service pipes and connections, and for acquiring said franchise, capital stock of the par value of..... \$17,000.

2. To pay promotion expenses, ^{capital} stock of the par value of..... \$ 7,500.

3. To pay attorney's fees, capital stock of the par value of 500.

Referring to the first purpose for which the Company desires to issue its stock, it appears that Mr. Erwin paid to the town of Winters the sum of \$120.00 for the franchise, this sum including the advertising, which was done at the expense of the town. It appears further that the fees paid in connection with the incorporation of the Company amounted to \$47.00. Applicant submitted a statement of items necessary for the construction and equipment of the gas plant and for the laying of the mains, pipes and connections, which statement is as follows:

Items included in the estimate of the plant proper:

Real estate.....	\$1000	
Gas generator.....	7050	
Building for generator.....	1000	
Storage building.....	750	
3 Storage tanks.....	1200	
	-----	\$11,000.00

Estimate on pipes and connections:

1600 ft. 4-in. pipe @ \$29.68	479.68	
20000 ft. 2-in. " @ 9.44	1888.00	
7000 ft. 3/4" " @ 2.93	205.10	
10000 ft. 1/2" " @ 2.42	242.00	
275 crosses @ .35	96.25	
275 service @ .35	96.25	
275 service boxes @ .95	261.25	
	-----	\$ 3,268.53

275 standard meters (5 light) @ \$6.20	1,705.00
1 standard meter (200 ")	113.75

29000 feet of ditching @ .04	1,160.00
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Laying 29000 feet of pipe at .03	870.00
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Laying 10000 feet service pipe, setting service boxes and meters.....	1,000.00
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Total.....	\$19,117.28
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Referring to the promotion fees, the application for the issue of stock under this head is to include Mr. Erwin's services to date, and also his services until the plant has been constructed and is in operation, including particularly the sale at par of the stock which the Commission's order will authorize to be issued. Mr. Erwin has spent about three months on this project and has taken trips to several California towns to familiarize himself with the operation of gas plants. He testified that he had spent some \$400 or \$500 on this work. He also attended some six or seven meetings of the Board of Town Trustees of Winters in order to secure the franchise. He will hereafter have additional work in superintending the construction of the plant and in selling the stock. It will also be necessary to pay the attorney's fees which have been incurred. I shall not pass on the reasonableness of the amount of stock which applicant asks authority to issue in payment of attorney's fees, but shall include this item in the general item which I shall allow under the head of promotion fees. Considering the work which Mr. Erwin has already done and that which it will be necessary for him hereafter to do in order to put the plant in operation, I find that it would be reasonable to authorize the Winters Gas Company to issue its capital stock of the par value of \$2,000 for these promotion purposes. As the value of the promoter's service to the community will depend to a large extent on whether or not this project is completed and as no value will result to the community unless this gas plant is put into successful operation, the order will provide that of the stock authorized to be issued to Mr. Erwin for promotion services, stock of the par value of \$500 only may be issued at the present time. The remaining \$1500 may be issued only after the plant has been completed and placed in operation and after a supplemental order has been issued by this Commission specifically authorizing the issue of the balance of \$1500.

Referring to the prospects for success in the operation of the proposed plant, Mr. Erwin testified that, in his opinion, he would be able to secure at least 250 subscribers. He made a canvass

of one of the streets of the town and secured a list of 54 subscribers. Each person to whom he spoke subscribed. While this Commission cannot pass upon the question whether or not this plant will be successful, I am of the opinion that under all the facts of this case, authority should be granted to issue the stock hereinafter authorized. Purchasers of the stock will, of course, investigate the project and satisfy themselves as to whether or not there is a reasonable prospect for success.

I find that the purposes for which the proceeds of the stock hereinafter authorized to be issued will be used are not in whole or in part reasonably chargeable to operating expenses or to income and submit herewith the following form of order:

O R D E R.

C. A. ERWIN having filed with this Commission his application for authority to assign to Winters Gas Company that certain franchise for the manufacture and distribution of gas which has heretofore been granted to him by Ordinance No. 119 of the Town of Winters, and WINTERS GAS COMPANY having applied, under the provisions of Section 50 of the Public Utilities Act, for a certificate of public convenience and necessity, and WINTERS GAS COMPANY having applied for an order authorizing the issue of its capital stock of the par value of \$25,000, and a public hearing having been held upon said applications, and the Commission finding that the purposes for which the proceeds of the stock hereby authorized to be issued are to be used are not reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED as follows:

1. C. A. ERWIN is hereby authorized to assign to WINTERS GAS COMPANY his rights under Ordinance No. 119 of the Town of Winters, adopted November 11, 1913, and authorizing Erwin, his successors and assigns to manufacture and distribute gas within the Town of Winters. A certified copy of the assignment shall be filed

with this Commission and also with the Clerk of the Town of Winters.

2. The Railroad Commission hereby finds that the present and future public convenience and necessity require and will require the exercise by Winters Gas Company of the rights granted to C. A. Erwin by Ordinance No. 119, of the Town of Winters, granting a franchise for the construction and operation of a gas plant and distributing system in the Town of Winters, and the construction and operation of such plant.

3. Winters Gas Company is hereby authorized to issue its capital stock of the par value of twenty-one thousand and three hundred dollars (\$21,300) on the following conditions and not otherwise, to-wit:

(a) Said stock shall be issued at not less than par, for cash, with the exception of the stock herein authorized to be issued to C. A. Erwin for promotion.

(b) Said stock shall be issued only for the following purposes:

(1) Capital stock of the par value of one hundred and twenty dollars (\$120) may be issued in consideration for the transfer of the franchise hereinbefore referred to.

(2) Capital stock of the par value of fifty dollars (\$50) may be issued to pay the incorporation expenses referred to in the opinion herein.

(3) Capital stock of the par value of nineteen thousand one hundred and thirty dollars (\$19,130) may be issued for the purpose of constructing and placing in condition to operate the plant, pipes and connections, as these items and the amounts estimated therefor are specified in the opinion which precedes this order.

(4) Stock of the par value of two thousand dollars (\$2000) may be issued to C. A. Erwin for promotion purposes, including the payment of attorney's fees. Of this amount, stock of the par value of five hundred dollars (\$500) may issue immediately but the remaining stock may not be issued until the gas plant

and system have been completed and are in operation and until this Commission has made a supplemental order authorizing the issue thereof.

(c) Winters Gas Company shall keep separate, true and accurate accounts, showing the receipt and application in detail of the proceeds of the sale or other disposition of the stock hereby authorized to be issued, and on or before the 25th day of each month the Company shall make verified reports to the Commission, stating the sale or other disposition of said stock during the previous month, the terms and conditions of such sale or disposition, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

(d) The authority hereby granted to issue capital stock shall apply only to capital stock issued prior to December 1, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 5th day of December, 1913.

H. J. Loveland
Max Thelen
Edwin O. Edgerton

Commissioners.