

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Decision No. 3046

In the matter of the application)
of CENTRAL CALIFORNIA GAS COMPANY)
for an order authorizing the issue)
of common capital stock of the par)
value of \$6000.00.)

Application No. 1944.

GORDON, Commissioner.

O P I N I O N.

This is an application for authority to issue 60 shares of the common capital stock of Central California Gas Company, having a par value of \$100.00 per share, at \$94.00 per share, and to use the proceeds of such issue for the purpose of purchasing \$6,000.00, face value, of bonds of Central California Gas Company for deposit and cancellation by the trustee of Central California Gas Company's bond mortgage.

Public hearings on this application were held in San Francisco on December 14, and 23, 1915. Evidence was presented by Central California Gas Company and by the Railroad Commission. The matter is now ready for decision.

In Decision No. 2461, rendered on June 7, 1915, in Applications Number 1427, 1520 and 1543 of Central California Gas Company, this Commission drew attention to a large number of irregularities in the conduct of the business of Central California Gas Company and in the statements of the company's financial condition as shown in the company's books of account.

In denying said applications, this Commission said in part:

"When the deficit has been made good, and proper adjustments have been made on the books of this utility, and satisfactory evidence has been submitted of such restoration and such adjustments, or when this utility shall have submitted and received the approval of this Commission to plans for the restoration of its financial

affairs to a proper basis, this utility may again apply to this Commission for such issue of stocks or bonds or other evidences of indebtedness as may be necessary to enable it to raise the funds to go forward with its public utility business."

Without at this time commenting on other irregularities pointed out in said Decision No. 2461, it appears that the surplus account of Central California Gas Company as of December 31, 1914, was improperly stated to the extent of at least \$15,241.67. In other words, instead of having a surplus, as reported, of \$611.19, the company in reality had a deficit of at least \$14,630.48. Referring to this matter, the Commission, in Decision No. 2461, said in part:

"For this Commission to authorize the securities here applied for as this matter has been presented, and in the light of the disclosures here revealed, would be for this Commission to sanction and perpetuate these fraudulent financial practices."

When the present application was filed, Central California Gas Company was notified by this Commission that the Commission would expect the company to make a showing at the hearing herein that it had taken the necessary steps to comply fully with Decision No. 2461. At the first hearing herein, held on December 14, 1915, it developed that although more than six months had elapsed since this Commission's Decision No. 2461, rendered on June 7, 1915, Central California Gas Company had not as yet made the changes in its books of account and in its annual report as directed by this Commission in Decision No. 2461.

Central California Gas Company was thereupon informed that no further proceedings would be taken by this Commission under this application until the company had complied with the directions contained in Decision No. 2461. Thereafter, on December 15, 1915, Central California Gas Company filed with this Commission new pages to be pasted in its annual report to this Commission for the year ending December 31, 1914, showing

a deficit of \$14,630.48, as of December 31, 1914, as directed in Decision No. 2461.

Subsequent examination by this Commission's auditing department of the books of Central California Gas Company revealed the fact that in the interim between the date of Decision No. 2461, being June 7, 1915, and the submission of said additional pages for the annual report for the year ending December 31, 1914, on file with this Commission, Central California Gas Company had gone back over its books and taken certain items out of operating expenses for the years 1912, 1913 and 1914, and had transferred these items to capital account, so that the books of Central California Gas Company, subsequent to the time when the aforesaid changes were made in its annual report for the year ending December 31, 1914, showed a deficit of only \$4,572.42 instead of a deficit of \$14,630.48, reported to this Commission. This investigation also showed that for the period between January 1, 1915, and August 31, 1915, Central California Gas Company had put into capital account some \$6,407.23 of so-called development expense and also \$3,071.12 representing the fees of engineers, accountants and attorneys. Whatever may be said as to the propriety of placing the so-called development expenses in capital account, it is elemental that the amounts paid to the engineers, auditors and lawyers should not have been added to capital account.

The net result of these transactions for the period prior to December 31, 1914, was that although Central California Gas Company reported to this Commission in its annual report for the year ending December 31, 1914, a deficit of \$14,630.48, the company's books, at the very same time, as the result of the transactions hereinbefore set forth, showed a deficit of only \$4,572.42. By continuing the same process in 1915, and by further charging absolutely improper additional items to

capital account, and thereby apparently diminishing the operating expenses, the company's books showed an absolutely fictitious surplus as of August 31, 1915.

The fact that Central California Gas Company went back over its books of account subsequent to Decision No. 2461, dated June 7, 1915, and took out of operating expenses the items hereinbefore referred to, adding them to surplus for the apparent purpose of nullifying the directions with reference to the books of account contained in said Decision No. 2461, and that Central California Gas Company, while ~~making~~ rendering one report to this Commission in its annual report for the year ending December 31, 1914, at the same time so kept its books of account as to show an entirely different condition, are further conclusive evidences that this utility is acting in bad faith with this Commission and that the Commission can not, with any safety, authorize the issue of any additional securities by this utility until it has received satisfactory evidence that Central California Gas Company has completely changed its present policies and that it will hereafter deal with this Commission in entire good faith.

In addition, further, to the matters set forth in said Decision No. 2461, it now appears that Central California Gas Company has paid dividends on the 365 1/2 shares of the company's common capital stock which stand in the name of California Utilities Corporation. This corporation is controlled by Mr. C. S. S. Forney, who is also the President of Central California Gas Company. These 365 1/2 shares of Central California Gas Company's common stock were expressly issued for the purpose of control only, and it was specifically provided that these shares should not be treated as having value (Vol. 1, Opinions and Orders of the Railroad Commission of California, p. 663).

Furthermore, subsequent to Decision No. 2461, Central California Gas Company has expended several thousand dollars in securing reports of engineers and auditors and the services of attorneys. These expenditures could not possibly change the fact that General Operating and Construction Company, of which Mr. C. S. S. Forney was President, secured a large fraudulent profit in connection with a construction contract between General Operating and Construction Company and Central California Gas Company, nor could such expenditures in any way change the fact that the irregularities in the books of Central California Gas Company reported by this Commission's auditing department and later corrected by Central California Gas Company in its annual report to this Commission for the year ending December 31, 1914, actually existed on the books of Central California Gas Company. It is unnecessary to point out that expenditures of this kind incurred by a relatively small utility, will sooner or later absolutely ruin a utility, which, under proper management, could and would be of undoubted service to the people of Tulare County as well as fairly profitable to its stockholders.

The amount of capital stock which applicant herein desires to issue, being only \$6,000.00, is comparatively small. This amount could easily be secured by Central California Gas Company by assessment on its stock. But Central California Gas Company might as well understand definitely now that until the company has complied with this Commission's orders and has undone the fictitious and fraudulent transactions referred to herein and in Decision No. 2461, and has shown its intention to deal in absolute good faith with this Commission, it can not expect this Commission to co-operate with it. This Commission must use extraordinary care in passing upon the application of a utility whose every act it must continually scrutinize to detect possible further fraudulent practices.

I recommend that the application be denied and submit the following form of order:

O R D E R.

Good cause appearing,

IT IS ~~HEREBY~~ ORDERED, that the petition in the above
entitled proceeding be and the same is hereby denied.

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 15th day of
January, 1916.

Max Thelen
A. Storass
W. Gerdn
Edwin C. Eger
Franz R. Dehli
Commissioners.