Decision No. 319

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

Decision No. 319

In the matter of the application of West Coast Gas, Light and Fuel Company and Home Gas and Electric Company of Newport Beach for an order authorizing the consolidation of the two said companies and an order authorizing the consolidated company to issue stocks and bonds and further for a certificate authorizing extensions and the exercise of franchise rights.	Application No. 257.

William C. Crittenden for applicant.

Thelen, Commissioner.

OPINION

This is an application of West Coast Gas, Light and Fuel Company, hereinafter called the West Coast Company, and Home Gas and Electric Company of Newport Beach, hereinafter called the Home Company, for an order of this Commission authorizing the following acts:

1. The consolidation and merger of the two applicants into a new corporation to be known as the West Coast Gas Company.

2. The construction of a gas distributing system in specified towns.

3. The exercise of rights under a specified franchise.

4. The issue by the new corporation of a portion of its authorized capital stock in exchange for the outstanding capital stock of the two applicant companies.

5. The execution by the new corporation of a trust deed or mortgage to secure a proposed issue of bonds.

6. The issue by the new corporation of bonds of the face value of $100,000.oo for the purpose of refunding outstanding obligations of the two applicant companies and for the acquisition

of property and the construction, completion, extension and improvement of facilities.

These different requests will hereinafter be considered in greater detail.

The Home Company was incorporated in September, 1908 and is now engaged in the delivery of gas to the City of Newport Beach, including the localities of West Newport, Newport, East Newport and Balboa. It is now intended to extend this company's distributing system so as to serve Huntington Beach, an incorporated city, and Balboa Island. The Home company's authorized capital stock consists of 50,000 shares of the par value of $1.00 each, of which shares 15,945 have been issued. The Home Company has no preferred stock, no mortgages and no bonds. It is joint maker with the West Coast Company of promissory notes amounting to $45,500 and owes on accounts and sundry bills an additional $7,482,49. Of the issued capital stock R. E. L. Sackett owns 15,961 shares, being all except 2 shares.

For the year from January 1, 1911 to December 31, 1911, the Home Company had a deficit of $797.38, and for the quarter ending March 31, 1912, there was a deficit of $217.62. Under the present management, however, which took control of the business in July of this year, the finances of the company are rapidly improving. While on June 1, 1912, the company had only 223 consumers it now has 331, with 184 additional signed up at Huntington Beach and 27 signed at Balboa Island, to both of which localities it is planned to extend the Home Company's distributing system.

The West Coast Company was incorporated on October 23, 1911, with an authorized capital stock of 7500 shares of the par value of $10 each making a total par value of $75,000.oo. The entire authorized capital stock has been issued. The stock was apparently issued for very little or no consideration. With the exception of 2 shares it is all owned by Mr. R. E. L. Sackett, One-third of the stock was transferred to Mr. Sackett by the incorporators of the company in return for real estate valued at $3,000.oo: another third Mr. Sackett bought for $3,750.oo; and the remaining third he secured for $4,000.oo. The West Coast Company has constructed a plant for the manufacture of gas at Somerset and a distributing system in the towns of Clearwater, Downey, Hynes, Norwalk, Bellflower and Artesia, which towns are located some 12 miles southeast of the City of Los Angeles. This company has already connected up 200 subscribers and has contracts for 200 more.

The application shows that the cost of the property of the West Coast Company on September 6, 1912, was $62,270.70 and the cost of the property of the Home Company on the same day was $38,637.95, making a total on said day of $100,908.65. The book value of the property of the West Coast Company on October 15, 1912, was $55,656.51 and of the Home Company $38,706.83, making a total of $94,363.34. Applicant's engineer testified that such extensions and additions as are still necessary to complete the contemplated plant of these two companies would cost not in excess of $10,000 making a total book value of $104,363.34. The testimony shows that it would cost somewhat more to reproduce these properties at the present time.

Applicants now desire to merge and consolidate their systems into a new company to be known as the West Coast Gas Company, which new company is to have an authorized capital stock of $250,000, consisting of 10,000 shares of the par value of $25 per share, of which authorized capital stock the new company is to issue an amount equivalent to the par value of the present outstanding stock of the two applicant companies. The new company is also to execute its trust deed or mortgage to secure a possible maximum issue of bonds of the face value of $250,000 and to issue bonds of this authorization of the face value of $100,000. The proceeds of these bonds are to be used to pay up certain outstanding obligations and to acquire additional property and to construct additional facilities as will hereinafter appear in greater detail.

In order to give further security for the contemplated bonds Mr. R. E. L. Sackett is to convey to the new corporation a ranch containing about 135 acres of an estimated present value of $700 per acre, which ranch is at present subject to a first mortgage in the sum of $20,000 held by the Security Trust and Savings Bank of Los Angeles and executed on the 21st day of March, 1912.

Applicants urge as reasons for the consolidation that without such consolidation it will be impossible to float bonds for the additions and extensions which both applicants desire to make and to pay off the outstanding obligations of each of said companies, and that there will be some saving in administrative expenditures and that it will make possible within 2 years the connection of the plants of the two companies by means of a high pressure main and the supply of gas thereafter from a single plant instead of from 2 as at present.

With these preliminary statements I shall now consider applicant's prayer in detail.

In the first place applicants ask for an order under the provisions of Section 51-a of the Public Utilities Act authorizing their merger and consolidation into the proposed new corporation to be known as the West Coast Gas Company and also for the transfer to such new company of the plants, franchises and other property of applicants.

It is desired to have the new company issue to the respective owners of shares of stock in the two applicant companies its own shares of stock to the amount of the par value of the outstanding stock of the applicant companies, any difference which may result in pro-rating the number of shares, owing to the difference in the par value of the stock of the respective companies, to be paid in cash in each case by the shareholders of the two applicant companies. If each of the present shareholders of the applicant companies takes advantage of this proposition, the new company will be called upon to issue stock of the par value of $91,075 in exchange for the outstanding stock of the two applicant companies having a par value of $90,963 and the additional payment of $112 in cash. The ranch which Mr. Sackett is conveying to the new corporation will have a value of approximately $94,500, which is almost equivalent to the entire par value of the stock which it is proposed to have issued by the new company. In view of these facts I recommend that this portion of the application be granted.

√Applicant further asks under Section 50-a of the Public Utilities Act for an order certifying that public convenience and necessity require or will require the proposed construction of a gas supply and distributing system in the towns of Downey, Norwalk, Artesia, Somerset, Clearwater and Huntington Beach. As the gas manufacturing plant of each of applicants was constructed prior to March 23, 1912 and as the extensions which applicants desire to make will be entirely into territory which is not at present served by a utility of like character it will not be necessary for applicants to secure this Commission's order as a condition precedent to the construction of these extensions. Section 50-a of the Public Utilities Act does not apply to a case of this kind.

Applicant further asks for a certificate that public convenience and necessity require the exercise of rights and privileges under a franchise granted to West Coast Gas, Light and Fuel Company by Ordinance No. 291, New Series, of the County of Los Angeles, permitting the construction and maintenance of a system of gas pipes under and along the public roads and highways within that portion of the County of Los Angeles which applicants, or the new corporation, desire to serve. As this franchise was granted to take effect on February 20, 1912 and as rights were exercised thereunder by applicants prior to March 23, 1912, it is not necessary to secure this Commission's consent to the exercise of rights and privileges under said franchise. It appeared, however, at the hearing that the West Coast Company has secured a franchise effective September 16, 1912 for the delivery of gas in the City of Huntington Beach which matter was not referred to in the application. It is necessary under the provisions of Section 50-b of the Public Utilities Act to secure from this Commission a certificate authorizing the exercise of rights and privileges under said franchise and I recommend that such certificate be granted.

Applicants desire that the new corporation to be known as the West Coast Gas Company shall, after incorporation, execute its trust deed or mortgage covering all the property of the new corporation, as security for a possible maximum issue of bonds of the face value of $250,000, bearing interest at the rate of 6 per cent per annum. It is desired that the new corporation may issue under such authorization bonds of the face value of $100,000. The proceeds from these bonds are to be used as follows:

1. The proceeds from $25,000 of these bonds are to be used to refund 5 certain promissory notes with both applicants as makers now held by F. W. Boardman, trustee, for which notes applicants received $20,000 in cash, which money was used for the acquisition of property and the construction, completion, extension and improvement of applicants' facilities. The notes were given in the amount of $25,000 on the assumption that the bonds if issued would be sold at 80 so that the notes already take care of the bond discount.

2. The proceeds from $25,625 of said bonds are to be used to refund a promissory note in the amount of $20,500 with both applicants as makers and now held by F. W. Boardman. From this note applicants received $20,500 in cash which money was spent for

purposes properly capitalizable.

3. From the proceeds of $49,375 of bonds, being the remaining bonds, it is proposed to pay obligations of the West Coast Company and also of the Home Company and to purchase additional property and materials for both companies, all as specified on pages 15, 16 and 17 of applicants' petition, the total amount of money necessary for these purposes being $39,500.

I find that the proceeds from the obligations which it is intended to refund were used for purposes which are properly capitalizable and that the moneys which it is intended to spend for additional property and materials are not property chargeable to operating expenses or to income. If authority is secured to issue these bonds of the face value of $100,000, applicants will be able to liquidate almost all of their outstanding obligations and entirely to complete their plants according to their present plans.

The Commission devoted considerable attention at the hearing to the question of whether or not the new corporation would be able to meet the interest obligations on the proposed bond issue in addition to paying operating expenses and other fixed charges. Applicants' witnesses testified that they now had under contract some 900 services which they estimated would yield an average of $30 per year each, making a total gross revenue of $27,000 per annum. They stated also that the combined plant could be operated at an operating ratio of 60 per cent, leaving the sum of $10,800 per annum for the payment of $6,000 of interest on the bonds and for sinking fund and possible dividend on the stock. Based on the assumption that the proposed bond issue will complete the plants and that applicants' estimates are correct, the Commission will be reasonably safe in authorizing the proposed bond issue. It should be borne in mind also in this connection that the territory affected is growing rapidly and that the number of possible consumers will doubtlessly be materially augmented within the next few years.

Applicants claim that it will not be possible to sell the proposed bonds at a figure in excess of 80 cents on the dollar. They claim to have entered into an arrangement to sell the bonds for that figure. I am of the opinion that with the proper effort the bonds can be sold for more than 80 cents on the dollar. Some time will elapse before the new corporation can be incorporated and the necessary steps for the issue of the bonds taken. Applicants should exert themselves in the meantime to see whether they cannot secure a better price for the bonds. While this Commission's order will authorize the sale of the bonds at not less than 80 plus accrued interest this should not be taken as an indication on the part of the Commission that it place such price to be sufficient.

The West Coast Gas Company which is to issue the stock and bonds hereinafter in the order authorized, is not as yet incorporated. Ordinarily this Commission would not consider an application for such purposes on behalf of a corporation which is not as yet in existence. In this case, however, the corporation is to be formed from the consolidation of two other corporations which are in existence and the facts were set out as fully as could have been the case if the new corporation had actually been incorporated. Under these circumstances I recommend that the Commission depart from its usual course of procedure and make its order authorizing the issue of stocks and bonds by the new corporation when incorporated.

I submit herewith the following form of order:

ORDER

West Coast Gas, Light and Fuel Company and Home Gas and Electric Company of Newport Beach having filed with the Railroad Commission their application for authority to merge and consolidate and for a certificate that public convenience and necessity require and will require the exercise of rights and privileges under a designated franchise and for an order authorizing the consolidated corporation to be known as the West Coast Gas Company to issue capital stock and execute a trust deed or mortgage upon its property and to issue bonds as hereinafter in greater detail specified and a public hearing having been held upon said application and it appearing to the Commission that the purposes for which the proceeds of said bonds are to be used are not properly chargeable to operating expenses or to income.

IT IS HEREBY ORDERED AS FOLLOWS:

1. West Coast Gas, Light and Fuel Company and Home Gas and Electric Company of Newport Beach are hereby authorized to merge and consolidate their respective plants, systems, franchises and permits into a new corporation to be known as the West Coast Gas Company.

2. Public convenience and necessity require the exercise by said West Coast Gas, Light and Fuel Company or by said West Coast Gas Company when incorporated, of the rights and privileges heretofore granted to said West Coast Gas, Light and Fuel Company by the City of Huntington Beach by Ordinance effective September 16, 1912.

3. West Coast Gas Company, when incorporated, is hereby authorized to issue its capital stock of the par value of $25 per share and to an amount not exceeding the total par value of $91,075, to the respective owners of the present outstanding shares of stock of West Coast Gas, Light and Fuel Company and Home Gas and Electric Company of Newport Beach in exchange for the shares of stock respectively owned by said persons in said two companies.

4. West Coast Gas Company, when incorporated, is hereby authorized to execute and deliver its deed of trust or mortgage with possible maximum issue of bonds of the face value of $250,000 said bonds to bear interest not in excess of 6 per cent per annum.

payable semi-annually, after said West Coast Gas Company shall have filed with this Commission a trust deed or mortgage in form and substance satisfactory to the Commission and shall have received from the Commission a supplemental order approving said trust deed or mortgate.

5. West Coast Gas Company, when incorporated, is hereby authorized to issue its bonds of the face value of $100,000 bearing interest at the rate of 6 per cent per annum, payable semi-annually under and in accordance with the terms of said trust deed or mortgage, after approval by this Commission, on the following express conditions precedent and not otherwise, to-wit:

a. Said bonds shall be sold so as to net West Coast Gas Company in cash not less than 80 per cent of the face value thereof plus accrued interest.

b. The proceeds from the sale of said bonds may be used only for the acquisition of property and the construction, completion, extension and improvement of facilities and for the discharge or lawful refunding of obligations, as follows:

1. The proceeds from the sale of bonds hereby authorized of the face value of $25,000 shall be used for the lawful refunding of 5 certain promissory notes in the amount of $5,000 each bearing interest at the rate of 6 per cent per annum payable one day after date and executed by West Coast Gas, Light and Fuel Company and Home Gas and Electric Company of Newport Beach, payable to W. F. Boardman, trustee, on July 20, 1912, August 5, 1912, August 15, 1912, August 15, 1912 and August 15, 1912, respectively.

2. The proceeds from the sale of bonds hereby authorized of the face value of $25,625, shall be used for the lawful refunding of promissory note in the amount of $20,500 bearing interest at the rate of 6 per cent per annum, dated May 22, 1912, and executed by West Coast Gas, Light and Fuel Company

and Home Gas and Electric Company of Newport Beach payable to F. W. Boardman.

3. The proceeds of bonds hereby authorized of the face value of $49,375 shall be used for the acquisition of property and construction, completion, extension and improvement of facilities and for the discharge or lawful refunding of the obligations of West Coast Gas, Light and Fuel Company and Home Gas and Electric Company of Newport Beach in amounts not exceeding the amounts specified for these respective purposes on pages 15, 16 and 17 of the application which pages in so far as applicable are made a portion of this order for these purposes.

4. Before the bonds hereby authorized may be issued, West Coast Gas Company shall first have filed with this Commission a certified copy of a grant, bargain and sale deed to it from R. E. L. Sackett conveying the ranch referred to in the foregoing opinion free and clear of all incumbrances except the mortgage of $20,000 to the Security Trust and Savings Bank of Los Angeles.

5. This order shall not be effective in so far as it authorizes an issue of bonds until applicant shall first have paid the fee prescribed by Section 57 of the Public Utilities Act.

6. West Coast Gas Company, when incorporated, 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 and bonds hereby authorized to be issued and the disposition of each such share of stock and bonds, and on or before the 25th day of each month the company shall make a verified report to the Commission stating the sale or sales or other disposition of said stock and bonds during the previous month, the terms and conditions of sale or other 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, in so far as applicable, is made a part of this order.

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 November, 1912.

John M Eshleman

H D Loveland

Edwin O. Edgerton

Max Thelen

Commissioners.

#848 Railroad Commission State of California

$2.50 fee

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By H. Wickersham

Assistant Secretary.

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