

# ORIGINAL

Decision No. 3851

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application )  
of WINTERHAVEN IMPROVEMENT COMPANY, )  
a corporation, for an order author- ) Application No. 2388.  
izing the issue of capital stock. )

Knapp and d'Autremont, by H. H. d'Autremont, for  
Petitioner.

BY THE COMMISSION:

## O P I N I O N.

Winterhaven Improvement Company, a California corporation, asks authority to issue 63,500 shares of its capital stock of the par value of \$1.00 each, in lieu of 63,500 shares heretofore issued by Petitioner without securing the authority of the Railroad Commission, as provided in Section 52 of the Public Utilities Act.

Petitioner was incorporated on October 29, 1915, with an authorized capital stock of \$65,000.00, par value, consisting of 65,000 shares of the par value of \$1.00 each. Under its articles of incorporation, Petitioner has power to engage in the business of selling water, electric energy and gas, and of engaging in certain non-utility business. Petitioner's principal place of business is to be the townsite of Winterhaven, near the Laguna project, in Imperial County, California.

Winterhaven Townsite Company, a land company, caused the incorporation of petitioner. The Townsite Company has platted 40 acres of land into 264 business lots and has also platted the adjoining tract of 133.7 acres, which tract the company holds under option contract.

The Townsite Company conveyed to Petitioner ten lots for public utility purposes. Petitioner has issued to the Townsite Company, in certificates for 250 shares each, Petitioner's capital

stock of the par value of \$63,500.00.

Under arrangement between the Townsite Company and persons agreeing to purchase lands from it, upon the sale of each lot a certificate for 250 shares of Petitioner's capital stock is placed in escrow, together with the deed for the lot, to be issued to the purchaser when final payment has been made.

The Townsite Company has made a practice of selling its lots and the capital stock of Petitioner together, 250 shares of Petitioner's stock going with each lot. After deducting a selling commission of 12½ per cent, and certain discount for cash payments, one-half the proceeds of such sales has been credited to Petitioner.

The Townsite Company has sold 159 business lots and 39,750 shares of Petitioner's capital stock for the aggregate sum of \$ 80,250.00, mostly upon partial payments, to purchasers in various parts of Arizona. Up to August 31, 1916, the cash proceeds of said sales were \$16,984.68, of which \$10,031.25 were paid in commissions and the remaining \$6,953.43 were divided equally between the Townsite Company and Petitioner herein. Petitioner has expended \$622.20 for incorporation, legal fees and a well. At the date of the hearing herein, Petitioner had \$2854.51 in cash and \$31,632.66 in accounts receivable from sales already made.

Petitioner's capital stock heretofore issued was issued without an order of the Railroad Commission and in ignorance of the provisions of Section 52 of the Public Utilities Act, under which section the stock heretofore issued is void.

For its present public utility purposes, Petitioner needs only a small part of the money to which it is to become entitled under the contracts hereinbefore entered into.

The situation is complicated by the fact that Petitioner has power under its articles of incorporation to engage in both public utility and non-public utility business.

The sales of real estate by the Townsite Company and of capital stock by Petitioner are inseparably united under the plan

heretofore formulated by the Townsite Company.

The public utility features of this application are so involved with the sale of real estate and with the conduct of other business not of a public utility character that it will not be possible for us to grant this application in its present form.

It will be necessary for Petitioner to readjust its affairs before we can grant authority for the issue by it of any capital stock. Petitioner's articles of incorporation should be amended so as to limit Petitioner's business to business of a public utility character. Petitioner may then ask authority to sell its capital stock at par to secure such funds as it may need for public utility purposes only. An arrangement may be made between the Townsite Company and Petitioner by which the Townsite Company deeds to Petitioner, at its fair value, in exchange for capital stock of Petitioner, at par, such lot or lots as Petitioner needs for the conduct of its public utility business.

While it will probably be necessary for the Townsite Company to readjust its contracts with the purchasers of its ~~land~~ lots, by reason of the illegal issue of Petitioner's stock heretofore attempted, this is a matter to be worked out by the Townsite Company and in which the Railroad Commission is not concerned. Our concern is that Petitioner, a public utility, shall issue its capital stock only for proper public utility purposes, and only to the extent to which the funds are necessary, and that the funds thus secured are properly used for public utility purposes.

It will be necessary for Petitioner, before it can use the public streets for its public utility business, to secure a franchise from the local authorities and a certificate of public convenience and necessity from the Railroad Commission.

For the reasons hereinbefore stated, this petition will be denied, without prejudice to the right of Petitioner to make further application when it has readjusted its affairs in accord-

ance with this opinion.

O R D E R.

WINTERHAVEN IMPROVEMENT COMPANY having applied to the Railroad Commission for authority to issue 63,500 shares of its capital stock, of the par value of \$1.00 each, in lieu of a like number of its shares heretofore attempted to be issued without the authority of the Railroad Commission, and a public hearing having been held thereon, and it appearing that this application should be denied, without prejudice,

IT IS HEREBY ORDERED that the petition herein be and the same is hereby denied, without prejudice.

Dated at San Francisco, California, this 6th day of November, 1916.

Max Thelen  
H. H. Howard  
Alex Gordon  
Edwin O. Edgerton  
Frank R. DeWitt

Commissioners.