

Decision No. _____

ORIGINAL

Decision No. 4087

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
RIVER BEND GAS AND WATER COMPANY for)
a certificate of public convenience)
and necessity; application of ALTA)
DISTRICT GAS COMPANY to sell and)
RIVER BEND GAS AND WATER COMPANY to)
buy a certain gas plant; application)
of PARLIER WINERY to sell and RIVER)
BEND GAS AND WATER COMPANY to buy)
certain water works, gas franchise)
and lands; application of RIVER)
BEND GAS AND WATER COMPANY to issue)
and sell capital stock.)

Application No. 2632.

Chaffee E. Hall, for applicants.

GORDON, Commissioner.

OPINION

This is an application of River Bend Gas and Water Company, operating in Fresno County, for authority to purchase the gas plant and system of Alta District Gas Company of Dinuba, Tulare County, and the water system of Parlier Winery, located at Parlier, Fresno County.

River Bend Gas and Water Company also asks for authority to issue \$233,500 par value of stock as hereinafter more fully set forth and for certificates of public convenience and necessity to operate in the city of Kingsburg, Fresno County,

and in certain unincorporated territory in Fresno and Tulare Counties. Alta District Gas Company and Parlier Winery join in the application and ask for authority to sell their public utility properties to River Bend Gas and Water Company.

River Bend Gas and Water Company was incorporated under the laws of the State of California on April 2, 1915. It purchases gas from Alta District Gas Company at Dinuba and at the present time is serving the towns of Reedley, Parlier, Kingsburg and certain intervening territory.

The company was originally incorporated with an authorized capital stock issue of \$100,000. This has recently been increased to \$250,000, or 2,500 shares of the par value of \$100.00 per share. River Bend Gas and Water Company to date has issued but 5 shares of stock. This stock is controlled by Parlier Winery, but has been transferred to directors for qualifying purposes. The company has no mortgages upon its properties and has issued no bonds or notes. Its only indebtedness consists of advances made by Parlier Winery amounting to \$62,075.86, as of August 1, 1916.

Alta District Gas Company operates in the city of Dinuba, Tulare County, under a franchise granted to one A. A. Weber in June, 1913. The company was incorporated on June 13, 1913, with a total authorized capital stock issue of \$45,000, being 45,000 shares of the par value of \$1.00 per share. At the present time 28,000 shares of stock are outstanding all of which are owned by Parlier Winery, with the exception of directors' qualifying shares. On August 1, 1916, the company's liabilities consisted of two notes aggregating \$15,000, and other indebtedness of

of \$3,882.48. The latter sum represents advances made from time to time by Parlier Winery.

Parlier Winery was incorporated on May 5, 1909. In connection with its wine and distilling business it operates a small water plant and system. Subsequent to the hearing, it developed that this system is being operated without a franchise. Applicants should proceed at once to secure the necessary permit from the County of Fresno.

Parlier Winery now desires to be relieved from the burdens of a public utility to which it is subjected by the ownership of its water system, and it therefore proposes to consolidate its water utility properties with the two gas companies which it controls; namely, Alta District Gas Company and River Bend Gas and Water Company.

In effecting this consolidation, it is proposed that River Bend Gas and Water Company shall issue stock at 75 per cent of par, as follows:

	<u>Par Value</u> <u>of Stock</u>
To Alta District Gas Company for entire property and assets as of August 1, 1916, free and clear from debts and encumbrances.....	\$ 61,200.00
To Parlier Winery for water works and land as of August 1, 1916, free and clear from debts and encumbrances.....	14,300.00
To Parlier Winery for advances to River Bend Gas and Water Company to August 1, 1916, amounting to \$62,075.86.....	82,800.00
To Parlier Winery for promotion services estimated at \$5,000.00.....	6,700.00
To be sold to Parlier Winery for cash for legal expenses amounting to \$1,000.00.....	1,333.00
To be sold to Parlier Winery for cash for additions and betterments during next two years estimated at \$50,000.00.....	66,667.00
To be issued to directors in lieu of shares heretofore issued for qualification purposes.....	<u>500.00</u>
Total - - - - -	\$233,500.00

I shall take up the above items in order.

Alta District Gas Company acquired its plant from one A. A. Weber under authority of this Commission granted by Decision No. 972 (Vol 3, Opinions and Orders of the Railroad Commission of California, page 623), and Decision No. 1980 (Vol. 5, Opinions and Orders of the Railroad Commission of California, page 814). The consideration for the transfer was the issuance to said A. A. Weber of \$28,000 par value of stock of Alta District Gas Company, the property being transferred subject to indebtedness amounting to approximately \$11,000.00. The \$28,000.00 of stock acquired by Mr. Weber has since come into the hands of Parlier Winery, and the properties of Alta District Gas Company have been operated for approximately a year past in conjunction with the properties of River Bend Gas and Water Company.

As of August 1, 1916, the "book value" of the assets of Alta District Gas Company is stated by the applicants herein to be the sum of \$45,879.55. While applicants contend that this figure does not reflect the true value of the property, it is proposed to use this figure as the basis of the proposed transfer and issue of stock.

A valuation made by W. J. Hammond, assistant engineer of the Commission, places the estimated reproduction cost new of the properties of River Bend Gas and Water Company and Alta District Gas Company as of November 1, 1916, at \$121,538.00. This figure does not include materials and supplies amounting to approximately \$5,000.00. Mr. Hammond places the estimated reproduction cost new of the properties of Alta District Gas Company as of August 1, 1916, at approximately \$50,000.00. The original cost appears to have been approximately \$45,000.00.

The water utility system owned and operated by Parlier Winery was first installed in 1913. The water supply is obtained from a well owned by the winery. Water is raised from the well by means of a steam pump, the steam being obtained direct from the steam plant used in conjunction with the winery. Parlier Winery proposes to retain the well and the ground on which it is located, transferring to River Bend Gas and Water Company the real estate upon which the tank and the tower are located, and the distributing system.

It is proposed that River Bend Gas and Water Company and Parlier Winery shall enter into a contract by which Parlier Winery will furnish water, including steam and labor for pumping, to River Bend Gas and Water Company, for the sum of \$150.00 per month. If this arrangement is carried into effect, River Bend Gas and Water Company will neither own nor control the source of its water supply and Parlier Winery, in so far as it sells water to River Bend Gas and Water Company, will remain a public utility.

The "book cost" of the water works and lands proposed to be transferred to River Bend Gas and Water Company as of August 1, 1916, is stated by applicant to be the sum of \$10,736.17. James Armstrong, assistant engineer for the Commission, reported at the hearing that the original cost of the property as of December 1, 1916, was estimated by him to be the sum of \$11,153.72. During the 11 months of 1916, the total additions and betterments added amounted to \$473.10. From this I believe we may safely assume that original cost as of August 1, 1916, to have been approximately \$11,000.00.

As heretofore stated, Parlier Winery has advanced to River Bend Gas and Water Company up to August 1, 1916, the sum of \$52,075.86. Parlier Winery is entitled to reimbursement for these advances and I shall recommend that River Bend Gas and Water Company be permitted to issue stock therefor.

In asking for the issue of sufficient amount of stock to Parlier Winery to net the sum of \$5,000.00 for promotion services, applicants call attention to the fact that no charges have been made by Parlier Winery for the services of its employees in promoting the organization and business of River Bend Gas and Water Company. Mr. R. K. Madsen, manager of Parlier Winery, is also general manager of River Bend Gas and Water Company and until recently his services have been donated to the gas company without charge.

It appears that during the construction period, Mr. Madsen supervised every detail of the work and it further appears that due to his ability, a substantial saving was made in the cost of construction.

I am of the opinion that this Commission may reasonably authorize the issue of a sufficient amount of stock to Parlier Winery to reimburse it for promotion services amounting to \$5,000.00.

I am further of the opinion that River Bend Gas and Water Company may be allowed to sell stock to Parlier Winery to net \$1,000.00 for legal expenses.

I shall now consider the proposed sale of stock by River Bend Gas and Water Company to net \$50,000.00 for additions and betterments. It was applicants' original intention to issue and sell only sufficient stock to net \$10,000.00 for this purpose. At the hearing, however, the application was amended with the request that River Bend Gas and Water Company be provisionally authorized to issue and sell during the next two years a sufficient amount of stock to net the sum of \$50,000.00.

The company states that it has under consideration an extensive construction program, including extensions in and about the towns of Sanger, Del Roy, Sultana, Orosi and Cutler. I am willing to recommend the issue of this stock upon the condition, however, that the proceeds from the sale of said stock shall only be expended under supplemental orders from this Commission.

I shall also recommend that River Bend Gas and Water Company be permitted to issue five shares of stock in lieu of the shares heretofore issued to qualify directors.

I now come to a consideration of River Bend Gas and Water Company's request that it be allowed to issue stock at not less than 75 per cent of par. While I am ready to recognize that this company is as yet in the development stage and that a reasonable discount upon its stock may be allowed, I am not willing to recommend the sale of stock at the figure asked for. Under all the circumstances of this particular case, a discount of not to exceed 10 per cent appears to me to be reasonable, and I shall so recommend.

In Decision No. 2416 (Vol. 6, Opinions and Orders of the Railroad Commission of California, page 1064), this Commission granted Parlier Winery authority to transfer to

River Bend Gas and Water Company, a franchise from the City of Reedley, dated March 3, 1915, a franchise from the County of Fresno, dated February 11, 1915, and a franchise from the City of Kingsburg, when the same should have been granted.

The Commission further declared that public convenience and necessity required the exercise by River Bend Gas and Water Company of the rights granted by the above mentioned franchises from the City of Reedley and the County of Fresno, and declared that upon further application it would issue a certificate of public convenience and necessity under the franchise to be obtained from the city of Kingsburg. This franchise has since been obtained and a request for the issue of a final certificate of public convenience and necessity is included in the application herein.

In examining the copy of the franchise from the City of Kingsburg, which has been filed in connection with the application herein, I find that Section 7 of said franchise contains certain provisions assuming to fix the heating value and pressure under which gas shall be furnished by the grantee.

In view of the fact that these are matters which may affect the jurisdiction of this Commission, I shall recommend that a certificate of public convenience and necessity be issued on such conditions as shall not in any degree constitute a waiver of this Commission's power hereafter to regulate any of the matters relating to this utility which may properly come under its jurisdiction.

At the hearing it developed that River Bend Gas and Water Company has commenced operations in the City of Kingsburg although it has not obtained a final order from this Commission upon its application for a certificate of public convenience and necessity. This is clearly a violation of the provisions

of Section 50 of the Public Utilities Act. Applicant should be advised that this Commission is not disposed to deal lightly with offenders in this regard.

In connection with the transfer of the public utility properties of Parlier Winery to River Bend Gas and Water Company, authority is asked to transfer two franchises, as follows:

A fifty-year franchise from the County of Tulare, adopted August 15, 1915, under Ordinance No. 133, granting Parlier Winery, or its successors, the right to construct and operate a gas distributing system within the towns of Sultana, Orosi, Cutler and adjoining territory and also along certain described county highways.

A fifty-year franchise from the County of Fresno, adopted July 10, 1915, under Ordinance No. 158, granting to Parlier Winery, its successors and assigns, the right to construct and operate a gas distributing system in the Towns of Sanger and Del Rey and adjoining territory and along certain described county roads.

Both of the above mentioned franchises provide for payment to the respective grantors annually after the first five years of 2 per cent of the gross annual receipts.

As the territory covered by these franchises is not at present occupied by any utilities of like character, I shall recommend that River Bend Gas and Water Company be granted certificates of public convenience and necessity thereunder.

At the date of hearing, December 9, 1916, River Bend Gas and Water Company and Alta District Gas Company were serving 1,016 consumers. Mr. LeBaron, superintendent of the River Bend Gas and Water Company, testified that during the past three or four months approximately 50 consumers per month have been added.

For the year ending December 31, 1916, Mr. LeBaron estimated that the gross revenue would amount to approximately \$24,000.00. During the year 1917, he estimates that this revenue will be increased to approximately \$3,000.00 per month or \$36,000.00 per year, and that the number of patrons will be increased from 1,200 to 1,400.

At the date of the hearing Parlier Winery's water system had 128 consumers as against 112 on December 31, 1915. The gross revenue of this water system for the year 1915 was \$2,579.71. For the year 1916 it is estimated at \$2,996.89. If this property is sold to River Bend Gas and Water Company, Parlier Winery will be one of its heaviest consumers. To date the winery company had paid nothing for the water which it has used. The operating expenses of the water system are figured at \$1,860.00, being \$150.00 per month for water and pumping expenses and \$5.00 per month paid to a bank for collection service.

From these figures it appears that River Bend Gas and Water Company will be enabled to earn a fair profit upon a reasonable capitalization. The territory which it proposes to serve is a prosperous one and the demand for gas and water service should show a healthy increase during the next decade.

After a careful consideration of the matters involved in this application, I submit the following form of Order:

O R D E R

RIVER BEND GAS AND WATER COMPANY, PARLIER WINERY and ALTA DISTRICT GAS COMPANY having applied to this Commission for authority to transfer certain public utility property, as set forth in the foregoing opinion; and River Bend Gas and Water Company having applied to this Commission for a certificate that public convenience and necessity require the exercise by it of the rights granted by Ordinance No. 133 of the County of Tulare, Ordinance No. 158 of the County of Fresno, and Ordinance No. 91 of the City of Kingsburg; and River Bend Gas and Water Company having applied to this Commission for authority to issue stock; and a hearing having been held;

And it appearing to this Commission that applicants' requests are reasonable and should be granted and that the purposes for which it is proposed to issue stock are ^{not} reasonably chargeable in whole or in part to operating expenses or to income;

IT IS HEREBY ORDERED that Alta District Gas Company be and it is hereby authorized to sell and River Bend Gas and Water Company be and it is hereby authorized to purchase the business, franchises and property of the Alta District Gas Company as the same existed on August 1, 1916; a description of the real property so to be transferred being attached to this Decision and marked Exhibit 1.

IT IS HEREBY FURTHER ORDERED that Parlier Winery be and it is hereby authorized to sell and River Bend Gas and Water Company be and it is hereby authorized to purchase the water works, system and franchises of Parlier Winery as the same existed on August 1, 1916, a description of the real property so to be transferred being attached to this Decision and marked Exhibit 2.

IT IS HEREBY FURTHER ORDERED that River Bend Gas and Water Company be and it is hereby authorized to issue stock as follows:

(a) To Alta District Gas Company in full payment for its properties as of August 1, 1916, stock of the par value of	\$50,000.00
(b) To Parlier Winery in full payment for its water works as of August 1, 1916, stock of the par value of	12,300.00
(c) To Parlier Winery in full payment for advances to August 1, 1916, stock of the par value of	69,000.00
(d) To Parlier Winery in full payment for promotion services to August 1, 1916, stock of the par value of	5,560.00
(e) To directors of River Bend Gas and Water Company in lieu of shares heretofore issued five shares of the par value of.....	<u>500.00</u>
Total - - - - -	\$137,360.00

IT IS HEREBY FURTHER ORDERED that River Bend Gas and Water Company be and it is hereby authorized to issue and sell for cash, at not less than 90 per cent of its par value, 56,700 shares of stock for the following purposes:

Legal Expenses.....	\$ 1,000.00
Additions and betterments to plant and system.....	<u>50,000.00</u>
Total - - - - -	\$51,000.00

The Railroad Commission of California hereby declares that public convenience and necessity require the exercise by River Bend Gas and Water Company of the rights and privileges conferred by Ordinance No. 91 of the City of Kingsburg, County of Fresno, adopted on or about July 25, 1915; Ordinance No. 158 of the County of Fresno adopted July 10, 1915; and Ordinance No. 133 of the County of Tulare, adopted August 15, 1915.

The authority herein granted is granted upon the following conditions and not otherwise:

(1) The price at which the properties of Alta District Gas Company and the water system of Parlier Winery are transferred to River Bend Gas and Water Company shall not be binding upon this Commission or any other public body as representing the value of said properties for rate making or other purposes.

(2) The properties herein authorized to be transferred shall be transferred free and clear from all encumbrances.

(3) Before this order shall become effective, River Bend Gas and Water Company shall file with the Railroad Commission a stipulation duly authorized by its Board of Directors declaring that River Bend Gas and Water Company, its successors and assigns, will never claim before the Railroad Commission or any court or other public body a value for any rights or privileges which it may obtain under Ordinance No. 91 of the City of Kingsburg, adopted on or about July 25, 1915; Ordinance No. 158 of the County of Fresno, adopted July 10, 1915; and Ordinance No. 133 of the County of Tulare, adopted August 15, 1915, or under any franchises acquired from Alta District Gas Company in excess of the actual cost

to River Bend Gas and Water Company of acquiring said franchises, and it shall receive from the Railroad Commission a supplemental order declaring that such stipulation in form satisfactory to the Railroad Commission has been filed with the Railroad Commission.

(4) The authority herein granted Parlier Winery to sell and River Bend Gas and Water Company to buy the water plant and system of the former company shall not become effective until Parlier Winery shall have filed with this Commission a copy of the contract which it proposes to enter into for the sale of water to River Bend Gas and Water Company and shall have secured from this Commission a supplemental order approving the same.

(5) Before the authority herein granted Parlier Winery to transfer its water utility properties to River Bend Gas and Water Company and of River Bend Gas and Water Company to issue stock in payment therefor, shall become effective, Parlier Winery shall secure a franchise for the operation of its water utility system from the County of Fresno and shall secure a supplemental order from this Commission approving the same.

(6) The stock herein authorized to be sold by River Bend Gas and Water Company for additions and betterments shall only be sold as needed and the proceeds from the sale of said stock shall be placed in a special trust fund to be expended only upon further orders from this Commission after River Bend Gas and Water Company shall have filed with this Commission a detailed statement of the additions and betterments which it proposes to construct.

(7) Nothing in this order or the opinion which precedes it and no provision contained in Ordinance No. 91 of the City of Kingsburg, shall in any manner abridge or restrict the jurisdic-

tion or control of this Commission over River Bend Gas and Water Company or over the whole or any portion of its system or in any manner affect this Commission's power hereinafter to issue such orders in relation thereto as this Commission may deem proper.

(8) River Bend Gas and Water Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stock herein authorized to be issued; and on or before the twenty-fifth day of each month, the company shall make verified reports to this Commission setting forth the sale or sales during the preceding month, the terms and conditions of the sale, 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.

(9) The authority herein granted to transfer property and to issue stock shall apply only to such property as shall have been transferred and such stock as shall have been issued on or before December 31, 1917.

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 February, 1917.

Max Thelen
H. H. Leland
W. G. Leland

Frank R. Deolin

Commissioners.

EXHIBIT NO. 1.

Lots One (1), Two (2), Three (3), Four (4) and Five (5) in Block Fifty-seven (57) of the City of Dinuba, County of Tulare, State of California, as per map recorded in book 3, page 15 of Maps, in the office of the County Recorder of said County of Tulare.

EXHIBIT NO. 2.

That certain lot, piece or parcel of land situate, lying and being in the Town of Parlier, County of Fresno, State of California and particularly described as follows, to-wit:

BEGINNING at a point Two Hundred and Twenty-five (225) feet west of the intersection of the southerly line of Tulare Street with the Westerly line of "X" Street; running thence Westerly along the said Southerly line of Tulare Street One Hundred and Twenty-five (125) feet; thence at right angles southerly a distance of One Hundred and Fifty (150) feet; thence at right angles easterly a distance of One Hundred and Twenty-five (125) feet; thence at right angles Northerly a distance of One Hundred and Fifty (150) feet to the place of beginning.