

Decision No. _____

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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In the matter of the application of
IMPERIAL VALLEY FARM LANDS ASSOCIATION,
an unincorporated association, and of
IMPERIAL UTILITIES CORPORATION, a cor-
poration, for an order or orders au-
thorizing the sale and transfer by the
said Imperial Valley Farm Lands Associa-
tion to the said Imperial Utilities Cor-
poration of the Calipatria Water Works,
water plant and system, and of the Niland
Water Works, water plant and system in
Imperial County, State of California.

ORIGINAL

Application No. 3106

Charles F. Potter for applicants.

BY THE COMMISSION:

O P I N I O N

In the amended petition herein,

IMPERIAL VALLEY FARM LANDS ASSOCIATION, Carl F. Schader and
Arthur E. Hull ask authority to sell and IMPERIAL UTILITIES
CORPORATION ask authority to purchase public utility water
properties at Calipatria and Niland, Imperial County, and fully
described in Exhibit "I" attached to the application. Im-
perial Utilities Corporation also asks the Railroad Commis-
sion to declare that public convenience and necessity require
it to exercise the rights and privileges granted to Arthur E. Hull
by the Board of Supervisors of Imperial County under franchise
dated May 18, 1914, and to authorize the corporation to execute
a so-called "open end mortgage" to secure the payment of bonds
and to issue thereunder at this time \$10,000.00 face value

Decision No. 4985

of 6 per cent 10-year bonds. Bonds in the amount of \$9,000.00 are to be issued in ~~part~~ payment for the property to be acquired from Imperial Valley Farm Lands Association, Carl F. Schader and Arthur E. Hull. The proceeds from the remaining \$1,000.00 of bonds will be expended for such purposes as the Commission may designate in a supplemental order.

Public hearings were held on October 4 and 5 before Examiner Westover.

Imperial Valley Farm Lands Association and its agents, Carl F. Schader and Arthur E. Hull, constructed the water works at Niland and Calipatria. These plants were installed primarily to supply water to the unincorporated territory known as Niland and Calipatria, Imperial County. Petitioners estimate the reproduction cost new of the properties at \$19,311.25 and the reproduction cost new less depreciation at \$12,729.40. The original cost of the properties is reported at \$14,666.60. In addition to this original cost, the Imperial Utilities Corporation reports that it has expended more than \$9,000.00 to extend and improve the water works and systems. The improvements thus made are referred to in the decision relative to Application Number 3079.

It is estimated that the daily consumption of water at Calipatria varies from 75,000 to 80,000 gallons, and at Niland amounts to approximately 250,000 gallons. At the former place there are about 120 consumers and at the latter 25. The Southern Pacific Company is the principal consumer at Niland, using approximately 210,000 gallons daily.

These water plants obtain their water supply through the medium of 500 shares of stock in the Imperial Water Company Number 3, a mutual organization. The water is taken from the Colorado River through the Imperial Valley Irrigation system.

Each share entitles the owner to four acre feet of water per year. Certificates for the 500 shares and also 121 shares additional are deposited in escrow under agreement by which Imperial Utilities Corporation may purchase in blocks of 50 shares at any time within five years after April 10, 1917, upon payment of \$15.00 per share. It is expected that five years operation of the plants will show how much stock is permanently needed.

By Decision No. 1933 of November 12, 1914 (See Vol. 5, Opinions and Orders of the Railroad Commission of California, p. 712) the Commission made its order declaring that public convenience and necessity require the exercise by Niland Water Company of rights and privileges under a franchise thereafter to be procured from the County of Imperial, and authorizing the issue of stock and bonds to provide for the construction of the plant and system at Niland. The order was made subject to applicants therein obtaining a valid franchise. Copy of franchise granted by the Board of Supervisors of Imperial County to Arthur E. Hull on May 18, 1914 and previously filed in the above proceeding was held by the Commission not to conform to the law. This franchise is again presented in this proceeding and we make the same ruling. This portion of the application will therefore be held in abeyance, to be covered by supplemental order when satisfactory evidence is presented that a valid franchise has been procured.

By Decision No. 2585 of July 9, 1915 (See Vol. 7, Opinions and Orders of the Railroad Commission of California, p. 594) the Commission made its order declaring that public convenience and necessity required the establishment of the system at Calipatria and fixing rates for water. It appears from the testimony herein that easements for the necessary mains were reserved in dedicating and deeding streets and alleys so that no franchise for the system at Calipatria is needed.

Imperial Utilities Corporation proposes to execute a so-called "open end mortgage". It contains, among others, a provision that the bonds are to be issued in series; that the first \$10,000.00 of bonds issued are to be known as "Series A" first mortgage 6 per cent gold bonds due June 1, 1927; that no bonds shall be issued except upon an order of the Railroad Commission of the State of California or other Commission having jurisdiction; that the bonds of any series subsequent to "Series A" may be issued in amounts equal in face value to 80 per cent of the capital expenditures; that every certificate filed with the trustee requesting it to certify bonds of any series subsequent to "Series A" must show that the net income of the Imperial Utilities Corporation for the twelve (12) months immediately preceding the date of the certificate is equal to three times the amount of interest charged against the outstanding bonds of "Series A" and that the annual interest to be charged against the additional bonds about to be issued, together with the annual interest charged against the outstanding "Series A" bonds, does not in the aggregate exceed one-half of said net annual income of Imperial Utilities Corporation, and that within thirty (30) days of January 1, 1922, and annually thereafter, Imperial Utilities Corporation shall set aside for sinking fund purposes to redeem bonds 10 per cent of its net earnings.

Counsel for petitioners stated at the hearing that the mortgage and bond issue are designed for the permanent financing of the company and that "it is expected that under the terms of this mortgage the entire financing of the future of the corporation will be taken care of, with respect to any extensions, improvements and developments at Calipatria and Niland, as well as any other company that the company may take in and operate in the State of California." We assume that counsel refers to that part of the financing which may properly be done through the issue of bonds. Certainly the authority herein granted to execute a mortgage and issue bonds should not be interpreted as an approval of

a policy which looks to the future financing of this utility entirely through the issue of bonds, nor should it be interpreted as indicative of the terms and conditions under which the corporation may issue bonds hereunder.

At this time, Imperial Utilities Corporation asks authority to issue \$10,000.00 of bonds. Bonds in the amount of \$9,000.00 are to be issued in payment for the properties to be acquired. The company is not in a position to definitely inform the Commission for what purposes it desires to expend the proceeds of the remaining \$1,000.00 of bonds. The expenditure of these proceeds may be covered by a supplemental order in this proceeding.

O R D E R.

IMPERIAL VALLEY FARM LANDS ASSOCIATION, CARL F. SCHADER and ARTHUR E. HULL having applied to the Railroad Commission/^{for authority} to sell and transfer the public utility water properties, described in "Exhibit I" attached hereto, to IMPERIAL UTILITIES CORPORATION, and IMPERIAL UTILITIES CORPORATION having applied to the Railroad Commission for an order declaring that public convenience and necessity require it to exercise certain franchise rights and for authority to execute a mortgage and issue \$10,000.00 of bonds, face value at par.

And a public hearing having been held and the Railroad Commission being of the opinion that the money, property, or labor to be procured or paid for by such issue is reasonably required for the purpose or purposes specified in the order, and that the expenditures for said purpose or purposes are not in whole or in part reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED that IMPERIAL VALLEY FARM LANDS ASSOCIATION, CARL F. SCHADER AND ARTHUR E. HULL be, and they are hereby, granted authority to sell and transfer to Imperial Utilities Corporation the properties described in Exhibit "I" attached hereto.

IT IS HEREBY FURTHER ORDERED that IMPERIAL UTILITIES CORPORATION be, and it is hereby, granted authority to execute a mortgage in substantially the same form as the mortgage filed with the Railroad Commission in this proceeding and marked Exhibit "D".

IT IS HEREBY FURTHER ORDERED that IMPERIAL UTILITIES CORPORATION be, and it is hereby, granted authority to issue \$10,000.00 of its "Series A" 10-year 6 per cent. bonds.

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

1.-Of the bonds herein authorized to be issued \$9,000.00 shall be issued at their face value in payment for the properties herein authorized to be sold and transferred pursuant to the terms of Exhibit "C" attached to the application herein; the remaining \$1,000.00 of bonds shall be issued under such conditions and for such purposes as the Commission may indicate in a supplemental order.

2.-Within thirty days after the transfer of the properties Imperial Utilities Corporation shall file with the Railroad Commission a certified copy of the instrument of conveyance under which it holds title to the properties herein authorized to be transferred and acquired.

3.- The price at which the properties are herein authorized to be sold and transferred shall not be considered as a measure of value of said properties before the Railroad Commission, or any other public body, for rate-fixing or any other purpose, other than this proceeding.

4.-The authority herein granted to transfer properties shall not be interpreted directly or indirectly as a finding of value for the water stock of Imperial Water Company Number 3.

5.-The approval herein given of said mortgage is for the purpose of this proceeding only and an approval in so far as this Commission has jurisdiction under the terms of the Public

Utilities Act and is not intended as an approval of said mortgage as to such other legal requirements to which said mortgage may be subject.

6.-- Within sixty days from the date hereof, Imperial Utilities Corporation shall file with the Commission the necessary data, showing that it has a valid franchise to construct and operate a water plant at Niland.

7.-- Imperial Utilities Corporation shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds herein authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said bonds 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 Number 24, which order, in so far as applicable, is made a part of this order.

8.-- The authority herein granted is conditioned upon the payment by petitioner of the fee prescribed in the Public Utilities Act.

9.-- The authority herein granted to transfer public utility

EXHIBIT NUMBER "1"

In Exhibit "C" attached to the petition herein, the properties to be sold and transferred are described as follows:-

(a)-The Calipatria Water Works, water plant and system located upon and adjacent to the townsite of Calipatria, Imperial County, California, upon and adjacent to Sections Fifteen (15) and Sixteen (16) in Township Twelve (12) South, Range Fourteen (14) East, together with all machinery, pipe lines, ditches, flumes, conduits, reservoirs, settling basins, pipes, equipment, fixtures, tools and materials of every kind and character, naturally and properly belonging to said water works and water plant and system; including also all rights of way, easements and franchise rights in and upon the streets, alleys, highways and other public ways of the said town of Calipatria and lands adjacent thereto for the use of, maintenance and extension of said water works, water plant and system for the purpose of conveying, distributing, selling and delivering water to the consumers and customers and purchasers of water within and upon said townsite of Calipatria and lands adjacent thereto. It being understood and agreed that the franchise rights relating to said water pipes and water mains are restricted to the alleys and their intersections with streets in the said townsite of Calipatria, except that the right of way and franchise for the main central water main or water pipes may be laid and maintained in Holabird Avenue, in accordance with the rights and reservations expressed upon the townsite map of Calipatria, being Map Number 156, recorded in Book 2 at pages 89, 90 and 91 of Maps in the office of the County Recorder of Imperial County, California.

(b) The Niland Water Works, water plant and system located upon and adjacent to the townsite of Niland, Imperial County, California, upon and adjacent to Sections Three (3), Four (4), Nine (9) and Ten (10) in Township Eleven (11) South, Range Fourteen (14) East, together with all machinery, pipe lines, ditches, flumes, conduits, reservoirs, settling basins, pipes, equipment, fixtures, tools and materials of every kind and character, naturally and properly belonging to said water works and water plant and system; including also all rights of way, easements and franchise rights in and upon the streets, alleys, highways and other public ways of the said town of Niland, and lands adjacent thereto for the use of, maintenance and extension of said water works, water plant and system for the purpose of conveying, distributing, selling and delivering water to the consumers and customers and purchasers of water within and upon said townsite of Niland and lands adjacent thereto.

(c) Six (6) acres of land located in the Southwest corner of what is known and described as Tract Number Sixteen (16) of the Calipatria townsite, upon which is located the present water plant of the Calipatria Water Works, the Southwest corner of said Six (6) acre parcel of ground being the intersection of the south line of Section Sixteen (16), Township Twelve (12) South, Range Fourteen (14) East, with the east side line of Holabird Avenue, said six acres of land being located in the Southwest corner of the Southeast Quarter of the Southeast Quarter of said Section Sixteen (16), and more particularly described in the deed of conveyance to be executed and delivered

by the Seller to the Buyer.

(d)-An easement and right to occupy and use approximately two (2) acres of land upon which the Niland pumping plant and settling basins are located for so long a period as the Buyer continues to use and occupy the same as the location of the pumping plant for the Niland Water Works System, and thereafter the said easement and right shall cease and the property shall return to the possession of the Seller, said two (2) acres of land being more particularly described in the instrument of transfer and sale relating to said Niland Water plant and water system, to be executed and delivered by the Seller to the Buyer.

(e)-Fifteen (15) acres of land located in the Southwest Quarter of the Southwest Quarter of Section Thirty-five (35), Township Ten (10) South, Range Fourteen (14) East, below the east high line main canal of the Imperial Valley Water Irrigation System. It is understood and agreed that the Seller is to give to the Buyer a contract of purchase covering said fifteen (15) acres of land, providing for the delivery of a good and sufficient deed thereto to the Buyer upon payment of the sum of Eighteen (\$18.00) per acre, with interest at the rate of six per cent (6%) per annum from the date of said contract of purchase to the date of payment of the full purchase price. The Seller is to obtain a deed for said land from the Southern Pacific Land Company within five years from and after the date hereof, and until such deed is obtained and good title is conveyed to the Buyer, the Seller shall pay all taxes and charges of any kind levied or imposed against or upon said land, and also all taxes and charges of any

kind levied or imposed against or upon said land, and also all taxes and charges of any kind levied or imposed against or upon the properties described in parcels (a), (b), (c) and (d) up to July 1, 1917. Said Fifteen (15) acres of land shall be accurately surveyed, the boundaries thereof determined, and a correct description of same given by the Buyer to the Seller on or before the 1st day of July, 1917, and reference is made to said survey for a correct description of said property.

(f)-Five Hundred (500) shares of full paid capital stock of the Imperial Water Company Number 3 for which the Buyer agrees to pay the price of Fifteen (\$15.00) Dollars per share. Certificates representing said shares of stock, duly endorsed for transfer, shall be placed in escrow with the First National Bank of Los Angeles, California, providing for the delivery thereof to the Buyer under the terms of this agreement. The Buyer shall have the privilege of receiving and paying for said shares of stock in blocks of not less than fifty (50) shares at any time. The entire five hundred (500) shares of stock shall be paid for and delivered on or before five (5) years from and after the date hereof. The Buyer shall pay all assessments levied against said shares of stock from and after the time when same is so placed in escrow, notice of any assessments being promptly given by the Seller to the Buyer. It is understood and agreed that the ownership of said shares of stock carries with it four (4) acre feet of water per annum for each share thereof; and from the time the Buyer takes possession of the water plants and works herein described, henceforth and thereafter, the Buyer shall have full and complete use of all water following

or relating to the ownership of said shares of stock without regard to the time or terms of payment therefor.

(g) Such rights of way and franchise rights as the Imperial Utilities Corporation may require across and upon any lands of the Seller, located in Imperial Water District Number 3, for the construction or extension of its pipe lines and conduits and other improvements in carrying on its business in and adjacent to the aforesaid towns of Calipatria and Niland, under its then control.

The considerations to be paid by the Buyer to the Seller for the fifteen (15) acres of land described as Parcel (e), and the five hundred (500) shares of capital stock of Imperial Water Company Number 3, described as Parcel (f) of Subdivision "First" of this agreement, have been already herein expressed. The further consideration to be paid by the Buyer to the Seller for all the additional property and property rights expressed and set forth in said Subdivision "First" shall be Nine Thousand (\$9,000.00) Dollars face value of said Series "A" bonds, same to be issued and delivered by the Buyer to the Seller as soon as the issuance and delivery of said bonds is authorized and approved by the Railroad Commission of the State of California.