

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of Central California Gas Company for a certificate of public convenience and necessity for construction of gas plant near the City of Lindsay and gas distributing system within the City of Lindsay; for an order permitting the exercise of a franchise right to be secured from the City of Lindsay; and for an order authorizing issuance of bonds of the face value of \$40,000.

Application No. 1

In the matter of the application of Central California Gas Company to purchase property of Home Gas Company of Porterville; also for an order authorizing Central California Gas Company to issue bonds of the face value of \$31,500 and preferred stock of the par value of \$28,500; also application of Home Gas Company of Porterville to sell its property to the Central California Gas Company, and for an order permitting the exercise of a franchise right to be secured from the City of Porterville.

Application No. 14

In the matter of the application of Central California Gas Company for certificate of public convenience and necessity in the matter of gas to be supplied in the City of Exeter and in the County of Tulare; also for an order permitting the exercise of franchise rights to be secured from the City of Exeter and the County of Tulare; also for an order authorizing the issuance of bonds of the face value of \$75,000.

Application No. 15

LESTER G. BURNETT, for applicants.

OPINION.

By the Commission.

The applications in the three cases entitled as above are made in pursuance of a general plan of the Central California Gas Company involving in part the construction of a gas plant near the city of Lindsay, the construction of distributing systems for gas in the cities of Lindsay and Exeter and of a high pressure gas pipe line between the company's plant near the city of Lindsay and the cities of Porterville and Exeter and also the purchase by the Central California Gas Company of the property of the Home Gas

Company of Porterville in the city of Porterville.

In Application No.1 Central California Gas Company applies for a certificate of public convenience and necessity in connection with the erection of its proposed gas plant near Lindsay and the construction of a distributing system within said city; and also for an order that the Commission will hereafter, upon application, issue its certificate permitting the exercise of a franchise for which applicant has applied to the city of Lindsay; also for an order authorizing the issuance by petitioner of bonds of the face value of \$40,000, to be used in the construction of applicant's gas plant and its distributing system in the city of Lindsay.

In Application No.14 Central California Gas Company applies for permission to purchase all the property of the Home Gas Company of Porterville, except its solvent credits, and to issue bonds of the face value of \$31,500 and preferred stock of the par value of \$28,500 for the purchase of said property. By "property" applicant seems to mean the capital stock of the Home Gas Company of Porterville. In this application Home Gas Company of Porterville also asks for an order authorizing it to sell all of its property except its solvent credits to the Central California Gas Company.

In Application No.15 Central California Gas Company asks for a certificate of public convenience and necessity in the matter of the supply of gas to the city of Exeter and of the construction of gas mains from applicant's plant at Lindsay to Porterville and also to Exeter; also for an order that the Commission will hereafter, upon application, issue its certificate authorizing applicant to use franchises for which applicant has applied to the city of Exeter and the county of Tulare; also for an order authorizing the issue by applicant of bonds having the face value of \$75,000, for the purpose of constructing a high pressure gas pipe line along the highways of Tulare County from applicant's proposed plant near Lindsay to Porterville, and also from said plant to Exeter.

At the hearing, the Home Gas Company of Porterville also asked for an order declaring that the Commission will hereafter

authorize the company to exercise a franchise right for which application has been made to the city of Porterville, and Central California Gas Company asked permission to execute a trust deed or mortgage to secure a maximum issue of first mortgage forty year gold bonds of the face value of \$300,000.

The Central California Gas Company was incorporated under the laws of California on January 8, 1912. Its authorized capital stock is \$100,000, consisting of 1000 shares of the par value of \$100 each. Of said shares 500, representing a par value of \$50,000, are common and 500, representing a par value of \$50,000, are preferred. On February 1st, 1912, Central California Gas Company entered into a written agreement with General Operating and Construction Company, providing in part as follows:

"Said party of the first part (Central California Gas Company) agrees that it will for labor heretofore done issue or cause to be issued to said party of the second part, 150 shares of preferred stock and 500 shares of common stock of Central California Gas Company upon the sealing of these presents and that it will in consideration of the work and material to be done and furnished under specifications entitled 'Specifications for gas plant and distributing system for Central California Gas Company' being done and furnished, pay or cause to be paid ^{six} 80/per cent bonds of Central California Gas Company as hereinafter provided."

These bonds were to have a face value of \$500 each, so that their total face value would be \$40,000, and were to be delivered to the contracting company when "the material necessary to comply with the hereinbefore described specifications has been delivered on the ground at the gas plant site or in Lindsay." The contracting company agreed that it would accept "in full payment for the labor done" the stock hereinbefore enumerated and would accept in full payment "for the work and material described" under said specifications

"the 80 bonds hereinbefore described at the time and in the manner hereinbefore set forth." The contract is accompanied by a bond on behalf of the contracting company, in the penal sum of \$1500.00.

Under this contract all the common stock of the Central California Gas Company, having a par value of \$50,000, and preferred stock having a par value of \$15,000 was issued and delivered to the General Operating and Construction Company prior to March 23, 1912, on which day the Public Utilities Act became effective. Applicant also sold to citizens of Lindsay prior to March 23, 1912, at par, 65 shares of preferred stock having a par value of \$6500.00. The remaining shares of its preferred stock having a par value of \$26,500 applicant desires to issue in connection with its purchase of the Home Gas Company of Porterville. No bonds have been issued.

Applicant's engineer estimates the cost of the proposed gas plant at Lindsay without reference to contractor's profit, engineering contingencies, administration and interest during construction at \$32,750.00. Allowing liberally for these omitted items the value of the plant will not exceed the sum of \$40,348.00. The applicant has purchased a site for its plant near Lindsay for the sum of \$600, so that the total value of its property in Lindsay and at its gas plant will not exceed \$40,948.00.

As against this property applicant desires to issue bonds of the par value of \$40,000 in addition to having already issued common stock of the par value of \$50,000 and preferred stock of the par value of \$15,000.

We find ourselves at this point squarely up against this proposition. We find a condition brought about by proceedings which took place before the Public Utilities Act went into effect which probably we would not have authorized in their present form. The applicant desires now to go forward from this point and to take other steps which in our opinion, standing alone, considerations of public policy would not prevent. The question so presented is one of the most serious matters which we shall be called upon to decide,

and we are frank to say that we have not fully made up our minds with reference thereto. We should not like to render a decision in this case which might be used as a precedent against the correct determination of this important question, but we have not yet decided definitely what it is best to do. Very often in applications such as this if we reject them, our policy will be merely destructive. No doubt there are cases where the public would be better off if enterprises were killed, but in many instances--and we concede this to be one--the public really needs the service of the utility which will not be accorded should we apply to enterprises that were in being at the time our authority took form tests that we would apply to a new enterprise arising entirely under our control. It being clear that the communities to be served by this utility are in need of the service and that the proceedings which are now sought to be had, if taken under the restrictions herein imposed, will not be subversive of the best interests of the public, and this decision being held merely to be a determination of the questions under the peculiar state of the facts before us and not to be used as a precedent in other similar cases where the facts may be somewhat different, we have concluded to grant the applications in the form set out in the order, as will now appear with greater particularity.

The cities of Lindsay and Exeter are at present not supplied with gas. A gas utility in these towns would, however, come in competition with electricity. There is also no gas service between the towns of Lindsay and Porterville and Lindsay and Exeter. The Commission finds that public convenience and necessity would be subserved by the construction of applicant's proposed line and system. It also finds that public convenience and necessity would be subserved by the exercise by Central California Gas Company of the franchise for which it has applied and by the exercise by the Home Gas Company of Porterville of the franchise for which it has applied.

The Commission is also of the opinion that the proposed purchase by Central California Gas Company of the property or capital stock of the Home Gas Company of Porterville, except solvent credits,

and the sale thereof by the Home Gas Company of Porterville to the Central Gas Company should be sanctioned. It should be clearly understood, however, that in making these findings the Commission does not guarantee the financial success of the proposed construction. The Commission is of the opinion that there is a field for the manufacture and distribution of gas in the communities affected but cannot pass on the probable success of any particular plan of supplying this field.

We shall refer now to the proposed issues of stocks and bonds.

As already stated, Central California Gas Company desires to issue bonds of the par value of \$40,000 against a plant and distributing system, the value of which, according to the estimates of its own engineer, will not exceed \$40,948.00. Under the facts as shown in this application, the Commission cannot authorize the issue of bonds practically to the full value of the property to be acquired. It must be borne in mind that this is to be a new utility and that there is always risk of failure attendant upon a new enterprise. The Commission is of the opinion that on the facts as presented in this case, it cannot in this application authorize an issue of bonds in excess of the face value of \$35,000. As already indicated, the contract between the Central California Gas Company and the General Operating and Construction Company provides that the entire bond issue shall be delivered to the contracting company when the material necessary for the construction of the plant has been delivered on the ground at the gas plant site or in Lindsay, and the amount of the bond to insure the faithful performance of the contract is only \$1500.00 as against a value of some \$40,948.00. In order to protect the utility we have concluded to make our authority to issue the bonds conditioned upon the giving by the construction company to the utility of a bond, satisfactory to the Commission, in the penal sum of \$20,000. It is clear that the General Operating and Construction Company will be obliged to sell the preferred stock of the par value of \$15,000 which has already been issued to it if it is to derive from

the stocks and bonds of the Central California Gas Company a fund sufficient to complete the plant. As these shares of stock have already been issued, it will not be necessary for the Commission to fix the minimum price at which they may be sold. Mr. C. S. S. Forney, the President of the General Operating and Construction Company, and also the organizer of the Central California Gas Company, testified that the common stock of the par value of \$50,000 which has already been issued to the contracting company, has no present value and that his company desires to retain this stock merely for the purpose of control. Of the 500 shares of stock involved, some 140 have passed out of the hands of the General Operating and Construction Company, leaving some 360 shares, representing a par value of \$36,000, still in the hands of the company. Mr. Forney has offered to turn in the certificates representing this stock to the Railroad Commission and to have stamped thereon the words "Issued for control only and not to be transferred without the consent of the Railroad Commission" or similar words, in order to make sure that the stock will not be sold to unsuspecting purchasers in excess of its value. As an original proposition, the Railroad Commission would not have consented to the issue of common stock to the extent to which it has been issued by the applicant. In this case, however, as the stock was issued prior to the effective date of the Public Utilities Act, and as the danger of sale to purchasers will be removed by the adoption of Mr. Forney's suggestion, the Commission will not exercise authority with reference to the common stock further than to make as a condition of its order the turning in of the stock for the purpose of having stamped thereon the language hereinbefore quoted or language to the same effect.

In its Application No. 14, the Central California Gas Company asked permission to pay for the plant or the capital stock of the Home Gas Company of Porterville, bonds having a face value of \$31,500.00 and preferred stock of the par value of ~~the~~ \$26,500.00. The bonds or the proceeds thereof are to be used to liquidate existing indebtedness of the Home Gas Company of Porterville, and the preferred stock is to be exchanged for the common stock of the

Home Gas Company of Porterville, now outstanding in the amount of \$35,500.00 par value. The applicant's engineer placed the value of the plant of the Porterville Company at something over \$47,000.00. While the Commission does not approve this valuation, it is of the opinion that the application with reference to the purchase and sale of the Porterville plant is a proper one and should be granted, provided that the bonds be disposed of so as to net the applicant not less than 80 per cent of their par value.

In its Application No. 15, Central California Gas Company asks authority to issue bonds of the par value of \$75,000 to build a high pressure gas pipe line from the applicant's proposed plant near Lindsay to Porterville and another one from this plant to Exeter. Applicant alleges that the cost of the proposed construction will be \$60,000, and asks authority to issue bonds of the par value of \$75,000.00. No plans are as yet presented for financing a distributing plant within the town of Exeter. For that reason the Commission's consent with reference to that portion of the gas pipe line which is to be laid from the plant at Lindsay to Exeter will be withheld until a complete and satisfactory plan for financing the distributing system in Exeter is presented to the Commission. The Commission is willing to authorize the construction of the gas pipe line from the plant near Lindsay to Porterville, but not in the amount requested by applicant. The Commission will not authorize an issue of bonds to the amount of 125 per cent of the value of the property to be acquired, where there is no property, not already covered by other outstanding securities, to serve as additional security. The Commission will not, under the circumstances, as here presented, authorize an issue in excess of 80 per cent of the value of the property to be acquired. The cost of the pipe line between Lindsay and Porterville, as computed by the applicant, is \$29,700.00. The Commission's authorization will accordingly be limited to a bond issue of the par value of \$23,500.00. As the applicant's entire common stock has already been issued, and as the preferred stock will be

taken up by the sale of 65 shares already made and by applications One (1) and Fourteen (14), it will be necessary for the applicant to derive the additional funds needed in connection with Application Fifteen (15) by assessment on the stockholders or in some other manner.

As in all cases of this kind, it will be necessary for applicant to keep separate accounts showing the receipt and application in detail of the proceeds of the sale or disposition of the bonds hereby authorized, and file with the Commission monthly reports showing the sale or disposition of such bonds, the moneys realized therefrom and the use and disposition of such moneys.

It should be clearly understood in these three applications and in all other cases of issuance of certificates of public convenience and necessity and approval of franchise rights, secured or to be secured and of issues of stocks, bonds or other securities, and cannot that the Commission does not/guarantee the financial success of the enterprise. People who finance public utilities in this state must continue to take the risk of success of the venture just as they have always done in the past. The Public Utilities Act is no magic talisman insuring public utilities against failure in case good judgment is not exercised in the financing and construction thereof. Under the Public Utilities Act, the projectors of public service enterprises may rest assured that in so far as the Commission has jurisdiction, the utility will be permitted to collect rates sufficient to yield a fair return on the money wisely and sanely expended in serving the public, but more than this they have no right to expect.

O R D E R.

Application having been made to the Railroad Commission of the State of California by Central California Gas Company and by Home Gas Company of Porterville, as hereinbefore indicated in the Opinion which precedes this Order, and a hearing having been duly held on each of the three applications which were filed, it is

hereby ordered as follows:

(1) The Railroad Commission finds that public convenience and necessity will be subserved by the construction of a gas plant near the city of Lindsay and by the construction of a distributing system for gas in the cities of Lindsay and Exeter by the construction of high pressure gas pipe lines along the highways of the County of Tulare between the cities of Lindsay and Porterville and Lindsay and Exeter.

(2) The Commission finds that public convenience and necessity will be subserved by the exercise by Central California Gas Company and by the Home Gas Company of Porterville of the franchise rights for which these companies have respectively applied to the cities of Lindsay, Porterville and Exeter and to the County of Tulare, as shown by the applications on file with this Commission and indicated in the foregoing Opinion.

(3) The Commission hereby authorizes the execution by Central California Gas Company to the Los Angeles Trust and Savings Bank, Trustee of a Trust Deed or Mortgage to secure a maximum issue of \$300,000 first mortgage Forty Year Gold Bonds, consisting of 600 bonds of the denomination of \$500 each, to be dated April 1st, 1912, and payable on the first day of April, 1952, bearing interest at the rate of six (6) per cent per annum, and payable semi-annually on the first days of October and April of each year.

(4) The Commission authorizes the issue of bonds under said mortgage in the amount of \$33,000.00, face value, to be applied solely to the construction of its proposed plant near Lindsay and its distributing system in said city, on the condition that the General Operating and Construction Company turn in to the Commission the amount of the common stock of the Central California Gas Company, now in its hands, amounting to some 360 shares, having a par value of \$36,000.00, to have stamped thereon the words "Issued for control only and not to be transferred without the consent of the Railroad Commission" or words having a similar import, and on the further condition that applicant secure from General Operating and Construction

Company a bond in the penal sum of \$20,000.00 conditioned upon the faithful performance of its contract to construct the gas plant near the city of Lindsay and the distributing plant therein, and satisfactory to the Commission.

(5) The Commission authorizes the purchase by Central California Gas Company of the property or capital stock of the Home Gas Company of Porterville, except its solvent credits, and the sale thereof by the Home Gas Company of Porterville to the Central California Gas Company. For this purpose the Commission authorizes the issue by the Central California Gas Company of bonds under said mortgage having a face value of \$31,500.00 and preferred stock of the par value of \$28,500.00, subject as to the bonds to the further conditions specified in Section 7 hereof.

(6) The Commission authorizes the issue of bonds under said mortgage having a face value of \$25,500.00 for the purpose of constructing a high pressure gas pipe line along the highways of the County of Tulare from applicant's proposed plant near Lindsay to Porterville, subject to the conditions specified in Section 7 hereof.

(7) The issue of bonds specified in Sections 5 and 6 hereof shall be upon the following conditions, in addition to those heretofore specified:

1. The Central California Gas Company shall sell said bonds so as to net the said company not less than 80 per cent of the par value of the principal thereof besides interest accrued thereon.

2. The Central California Gas Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale or disposition of said bonds during the preceding month, the terms and conditions of such sale or other disposition, the moneys realized therefrom and the use and application of such

moneys.

3. The Central California Gas Company shall hereafter submit to the Commission for its approval an amendment to its mortgage providing for a sinking fund for the retirement of its bonds.

4. The authority hereby given to issue said bonds shall apply only to bonds issued by said company on or before the 30th day of June, 1913.

Dated at San Francisco, California, this 30th day of May, 1912.

John M. Eschleman
H. D. Lovland

Edwin O. Edgeston
Commissioners.