

Decision No. 93

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of COAST VALLEYS GAS AND ELECTRIC COMPANY for permission to modify its trust deed or mortgage and 786 bonds issued thereunder.

Application No. 52.

Chickering and Gregory, for applicant.
W. S. Goodfellow, for E. H. Rollins and Sons.

OPINION.

Thelen, Commissioner.

Coast Valleys Gas and Electric Company applies to this Commission for permission to modify the provisions of its deed trust/or mortgage by striking therefrom a covenant to pay all taxes which may be imposed thereon and also to amend the bonds heretofore issued under such trust deed or mortgage.

Applicant was incorporated under the laws of this state on March 19, 1912, with an authorized capital stock of 50,000 shares, of the par value of \$100 each. On March 20th, 1912, its board of directors authorized a bonded indebtedness of ten million dollars. On March 22, 1912, applicant executed and recorded its trust deed or mortgage to Mercantile Trust Company of San Francisco, to secure said bonds. On the same day applicant also entered into an agreement with E. H. Rollins and Sons, under which the latter agreed to purchase 786 of applicant's six per cent bonds of the denomination of \$1000 each, secured by said trust deed or mortgage, at a price of ninety five (95) per cent of the par value thereof, with accrued interest to date of delivery, making a total of \$749,451, which moneys were to be applied as specified in said agreement. On the same day, the 786 bonds covered by the agreement were executed and delivered to the purchasers who in turn deposited them on the same day in the Anglo and London Paris National Bank as pledge for the performance of their agreement. These acts were all performed before midnight between March 22, and 23, when the Public Utilities Act

became effective.

Section 5 of Article IV of the trust deed or mortgage reads as follows:

"The company will, upon notice given to the trustee by the holder of any of the bonds hereby secured, pay any and all taxes (other than succession or inheritance taxes) which may be imposed upon such bonds or upon such holder by reason of such ownership thereof under the laws of the United States or of any state, county or municipality thereof."

Applicant alleges that this clause was inserted in the trust deed or mortgage by inadvertence and mistake and that none of the parties affected intended that it should appear. The clause was copied from a similar clause in a trust deed of the Western States Gas and Electric Company and in the haste attendant upon putting through this bond issue before the effective date of the Public Utilities Act seems to have escaped observation. Although the bonds will command a higher price if the clause is permitted to remain, a burden apparently unexpected by any of the parties will be cast upon applicant. E. H. Rollins and Sons, the purchasers, are willing to waive their advantage and through their attorney join in the application.

As the evidence shows that the paragraph in question was inserted by mistake or inadvertence and as the grant of the application will be of financial benefit to applicant while not injuring the public, I recommend that relief be given as prayed for. I make no comment on the time of the authorization and issue of the bonds involved in this application. Neither do I pass on the legality of the steps heretofore taken in connection therewith nor to the proceedings which are contemplated in order to make this Commission's order effective. Applicant and E. H. Rollins and Sons will, of course, see to it that this Commission's permission is carried out in a way which shall be legally effective under the constitution and laws of this state, and that to this end applicant's stockholders or directors take such action, if any, as may be necessary.

I submit herewith the following order:

O R D E R.

Application having been made to the Railroad Commission of the State of California by Coast Valleys Gas and Electric Company for permission to modify its trust deed or mortgage to Mercantile Trust Company of San Francisco, dated as of March 1, 1912, by striking therefrom Section 5 of Article IV and to issue amended bonds in lieu of the 786 bonds heretofore issued, so as to be brought within the provisions of said trust deed or mortgage so modified, and a public hearing having been duly held upon said application, and it appearing to the Commission that said Section 5 of Article IV of said trust deed or mortgage was inserted by inadvertence and mistake and that said application should be granted.

IT IS HEREBY ORDERED that permission be and the same is hereby granted to Coast Valleys Gas and Electric Company to modify its trust deed or mortgage dated as of March 1, 1912, by striking therefrom Section 5 of Article IV thereof; and

BE IT FURTHER ORDERED that permission be and the same is hereby granted to said Coast Valleys Gas and Electric Company to issue amended bonds of the face value of one thousand (\$1000) dollars each, bearing the numbers 1 to 786 inclusive, in lieu of bonds of the same numbers heretofore issued by applicant, said bonds to show upon their face that they represent the same original indebtedness which was created prior to March 23, 1912, and to be issued under said trust deed or mortgage as so modified.

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 7th day
of June, 1912.

John W. Eschmann
H. D. Loveland
Max Thelen

Commissioners.