

Decision No. 94

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of WESTERN STATES GAS AND ELECTRIC COMPANY for an order authorizing issue of bonds of face value of \$351,000 and amendment of trust mortgage and of bonds issued thereunder.

Application No. 66

Allen Chickering, for applicant.

O P I N I O N.

Thelen, Commissioner.

This is an application on the part of Western States Gas and Electric Company for an order of this Commission authorizing -

- (1) An issue of first and refunding mortgage bonds of the face value of \$351,000 to refund outstanding bonds of the same face value of Stockton Gas and Electric Corporation.
- (2) An amendment of applicant's trust deed and bonds heretofore issued thereunder, when presented by the holders.

Western States Gas and Electric Company was created on November 30, 1910, under the laws of the State of California. Its total authorized capital stock is fifteen million dollars, divided into 150,000 shares of the par value of \$100 each, of which stock ten million dollars, divided into 100,000 shares of the par value of \$100 each, is preferred stock and five million dollars, divided into 50,000 shares of the par value of \$100 each, is common stock. Of the authorized stock, 32,315 shares of common having a par value of \$3,231,500 and 21,250 shares of preferred stock, having a par value of \$2,125,000, have been issued.

By certificate of creation of bonded indebtedness filed with the Secretary of State on June 1st, 1911, applicant authorized the creation of a bonded indebtedness of ten million dollars secured by trust deed to Girard Trust Company, a Pennsylvania

corporation, likewise dated June 1st, 1911. Of the bonds so authorized, bonds of the face value of \$2,596,000 have heretofore been issued for the purpose of refunding the bonded indebtedness of various subsidiary corporations.

In December, 1910, applicant at a cost of five million dollars in cash and collateral notes, acquired all the property, privileges, franchises and assets of the Stockton Gas and Electric Corporation, Richmond Light and Power Corporation, American River Electric Company and Humboldt Gas and Electric Company. Applicant is now selling gas and electricity in the cities of Stockton and Eureka and electricity in the counties of San Joaquin and Humboldt, and elsewhere in the State of California.

I shall now consider applicant's first prayer, which is for an order of this Commission authorizing the issue of first and refunding mortgage 5 per cent Gold Bonds to the extent of \$351,000, to be secured by trust deed hereinbefore referred to. Applicant has arranged for the sale of these bonds at 87½, together with the accrued interest, and desires to use the proceeds together with other funds now in its treasury to retire first mortgage 6 per cent Gold Bonds of the Stockton Gas and Electric Corporation having the same face value, viz., \$351,000. Stockton Gas and Electric Corporation has a total outstanding bonded indebtedness of \$750,000 face value, of which applicant has acquired and now owns \$399,000 face value. The remaining bonds, having the face value of \$351,000, it is now proposed to retire, so as to permit the cancellation of the lien of the mortgage. When similar action has been taken as to the bonds of the American River Electric Company, the first mortgage and refunding bonds of applicant, which have been authorized in the amount of ten million dollars, as hereinbefore indicated, will become a first lien on all the property acquired by applicant. In view of the applicant's desire to finance additional construction from the sale of said bonds, such a consummation is a desirable one for applicant.

The redemption price of Stockton Gas and Electric Corporation bonds is 106. The difference between 87½ which applicant will realize from the sale of the bonds which it now desires to issue and the price which it will be compelled to pay to call in the Stockton Gas and Electric Corporation's outstanding bonds will be paid by applicant from moneys now in its treasury derived from the sale of securities prior to March 23, 1912.

As the granting of this application will not increase the amount of indebtedness now outstanding, and as it is to applicant's interest to cancel the outstanding indebtedness of its subsidiary corporations and clearly to the interest both of applicant and of the rate paying public to substitute bonds drawing 5 per cent interest for those bearing 6 per cent, I recommend that this portion of the application be granted.

Applicant's second prayer is for an order of this Commission authorizing applicant to amend its trust deed or mortgage to Girard Trust Company, in accordance with the supplemental trust agreement which is attached to the application and marked "Exhibit 6", to amend the bonds already outstanding when presented by the holders, and to change the form of such bonds as may hereafter be issued under said trust deed or mortgage. The supplemental agreement recites a paragraph in the form of bond which is set out on page 4 of the printed trust deed and reads as follows:

"The Company will, upon notice given by the holder of this bond to the Trustee, pay any and all taxes (other than succession or inheritance taxes) which may be imposed upon this bond 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."

and also the provisions of section 5 of article 4 of the trust deed, in which applicant covenants to pay said taxes. The supplemental agreement further alleges that said provisions "have caused great confusion and uncertainty in the matter of determining what taxes have been so imposed and has worked a great hardship

upon the company", recites that the holders of certain bonds now outstanding are willing to limit said provisions, and then states the proposed agreement of the parties as follows:-

"First: That all bonds issued, certified and delivered after the date of this agreement, and all bonds heretofore issued, the holders of which shall consent and agree thereto, shall bear stamped upon the face thereof, the following:

"Under and by virtue of the provisions of a supplemental Trust Agreement, between the Company and the Girard Trust Company as Trustee, dated the 9th day of May, A. D. 1912, the terms of this bond are amended so that the third sentence of this bond shall read:

"The Company hereby covenants and agrees that it will from time to time pay to the Trustee for the holder thereof a sum sufficient to reimburse such holder for all payments made for taxes (other than succession, inheritance, transfer or income taxes) not exceeding four mills on the dollar, assessed directly by the Commonwealth of Pennsylvania, (but not by any county, or municipality thereof) upon this bond or upon the holder thereof as a resident of said Commonwealth, by reason of his or her ownership hereof. Such payment and reimbursement to be made as provided in the Mortgage Indenture hereinafter referred to."

Any holder, owner or purchaser of this bond takes the same subject to, and by holding, owning or purchasing the same, hereby consents to the foregoing instrument."

"Second: All bonds hereafter issued under said Mortgage shall be so stamped by the Trustee under said Mortgage before the same shall be certified and delivered, and any and all bonds now issued under said Mortgage may from time to time be delivered by the holder or owner to said Trustee to be stamped and said Trustee shall thereupon so stamp any such bonds so delivered.

"Third: That section 5 of Article Four of said Mortgage, be amended so as to read as follows:

"The Company hereby covenants and agrees that it will from time to time pay to the Trustee for the holder of any of the bonds hereby secured, a sum sufficient to reimburse such holder for all payments made for taxes (other than succession, inheritance, transfer or income taxes) not exceeding four mills on the dollar, assessed directly by the Commonwealth of Pennsylvania, and not by any county, or municipality thereof, upon any bond or upon the holder of any bond, as a resident of such commonwealth, by reason of his or her ownership thereof. Such payment to be made upon the written request of the holders of such bonds for such reimbursement, which request shall state the distinctive numbers of said bonds upon which such taxes have been paid and shall set forth that the parties making such payment were the owners of such bonds at the date when such taxes were assessed, and that such taxes were assessed upon and paid by them as residents of the Commonwealth of Pennsylvania, owning such bonds. Such request

shall be made to the Trustee in writing within a period of sixty (60) days from the date of payment of taxes by such holders, and where the bond or bonds upon which reimbursement is claimed are not registered, such request shall be accompanied either by the production of the bond or bonds themselves as evidence of ownership, or a certificate as provided in subdivision (c) of Section 1 of Article Fourteen of this Indenture. The company shall not be liable to reimburse said holders for any taxes paid by them unless such request be made within said sixty (60) days, and it shall in no event be liable to reimburse such holder or holders for any taxes paid other than those of the current tax year in which the assessment is made, or for any interest or penalty imposed upon or paid by such holders or any of them in addition to the amount of said tax as originally assessed. Upon receipt of any request for reimbursement, the Trustee shall with reasonable promptness, furnish the Company at its office in the City of Chicago, a copy of such request, and the Company covenants that it will thereupon deposit with said Trustee a sum sufficient to reimburse the holder or holders of said bonds making such request or requests for payment of said taxes as herein provided, and the Trustee, upon receipt of such funds will pay to the holder or holders making such request or requests, a sum sufficient to reimburse such holder or holders for the payment of said taxes as herein provided, but only from and out of the funds so deposited with it for that purpose by the Company. It is expressly understood and agreed that the Trustee assumes no responsibility in any event for the performance of any of the undertakings of the Company as herein contained, nor for any default in making such payments by the Company; nor does it assume any responsibility in any way for reimbursing any such holder or holders for taxes paid. Its only undertaking being that it will upon deposit with it by the Company of a sum sufficient to make such payments, reimburse such holder or holders for all taxes paid as herein provided, and only out of the funds so deposited with it by the Company. In addition to the remedies provided in Articles Ten and Twelve hereof, the Company, for each and every failure on its part to make reimbursement under the terms of this Indenture, hereby gives to each and every bondholder entitled to reimbursement, who is not so reimbursed, a right of action against the Company. The exercise of such right of action, however, by any bondholder not so reimbursed, shall not deprive such bondholder of the lien of this Indenture for the payment of such reimbursement."

As the present holders of bonds issued under said Trust Deed will not be affected by the desired change, unless they consent thereto, and as persons who may hereafter purchase such bonds as may be issued under the authority of the Railroad Commission hereafter secured will take them in their amended form subject to the Trust Deed as amended and will consequently not be injured, and as the grant of the relief desired will be of financial benefit to applicant while not injuring the public, I recommend that the application be granted as prayed for.

It should be clearly understood that in giving its consent to the issuance of securities, the encumbrance of property, the amendment or modification of existing securities and encumbrances and kindred matters, this Commission does not pass upon the sufficiency or legality of the proceedings which may have been taken or which may be contemplated by applicant under the laws of this state other

than the Public Utilities Act. The Commission determines whether public convenience and necessity will be subserved by the grant of the application and the terms and conditions, if any, necessary to this end. It does not determine whether the proceedings which have preceded the filing of the application or those which are contemplated thereunder apart from the Public Utilities Act are regular. It accordingly becomes unnecessary for this Commission to determine whether the amendments or modifications which applicant desires to make under its second prayer can be made without action on the part of its stockholders.

I submit herewith the following order:

ORDER.

Application having been made to the Railroad Commission of the State of California by Western States Gas and Electric Company for the consent of the Commission to the issuance by said company of bonds to the amount of three hundred and fifty one thousand dollars (\$351,000) face value, said bonds to be payable on the 1st day of June, 1941, and to bear interest at 5 per cent per annum, payable semi-annually and secured by a trust deed or mortgage upon all the property of the company, and also for the amendment of applicant's trust deed or mortgage and of bonds heretofore issued thereunder, when presented by the holders, and a hearing having been duly held upon said application, and it appearing to this Commission that the money to be secured by the issue of said bonds is necessary to and reasonably required by said company for the discharge or lawful refunding of bonds of the same face value of the Stockton Gas and Electric Corporation, a subsidiary corporation, and that the amendment of applicant's trust deed or mortgage and its bonds heretofore issued should be permitted as prayed for.

IT IS HEREBY ORDERED that the Railroad Commission of the State of California does hereby authorize the issue by the said Western States Gas and Electric Company of three hundred and fifty-one thousand dollars (\$351,000) face value of principal of bonds

of said company, maturing the 1st day of June, 1941, redeemable at any interest date at 105% of the face amount thereof, with accrued interest to the date of redemption, and to bear interest at the rate of five (5) per cent. per annum, payable semi-annually under and in pursuance of the terms of the trust deed or mortgage heretofore and on the 1st day of June, 1941, made and executed by said Western States Gas and Electric Company to the Girard Trust Company, as trustee, said bonds to be sixty (60) bonds of the face value of five hundred dollars (\$500) each and numbered D 55 to D 58 inclusive, D 45 to D 52 inclusive, D 55 to D 56 inclusive and D 59 to D 100 inclusive and three hundred and twenty-one (321) bonds of the face value of one thousand dollars (\$1000) each and numbered W 586, W 2105 to W 2120 inclusive and W 2122 to W 2425 inclusive, upon the conditions following, and not otherwise:

(1) The Western States Gas and Electric Company shall sell the bonds hereby authorized so as to net the said company not less than eighty-seven and one half (87½) per cent of the par value of the principal thereof besides interest accrued thereon.

(2) The proceeds from the sale of said bonds shall be applied solely to purpose of retiring and cancelling bonds of the face value of three hundred and fifty-one thousand dollars (\$351,000) of the Stockton Gas and Electric Corporation, a subsidiary corporation.

(3) Said company shall keep separate, true and accurate accounts, showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued and on or before the 10th day of each month the company shall make a verified report to the Commission stating the sale or other disposition of such bonds during the preceding month, the terms and conditions of such sale, the moneys realized therefrom and the use and application of such moneys.

(4) The authority hereby given to issue such bonds shall apply only to bonds issued by said company on or before the thirtieth day of June, 1915.

AND IT IS FURTHER ORDERED that applicant be permitted to amend its said trust deed or mortgage dated the 1st day of June, 1911, and the bonds which have heretofore issued thereunder, when presented by the holders as specified in paragraphs first, second and third of said proposed supplemental trust agreement between applicant and Girard Trust Company and as hereinbefore set forth in the opinion in this application.

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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 M. Eschleman
W. D. Loveland
Max Thelen

Commissioners.