

Decision No. 33546

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SAN DIEGO GAS & ELECTRIC COMPANY, a
corporation, for authority to issue
and sell or exchange 314,625 shares
of a new issue of its Cumulative
Preferred Stock, 5% Series, \$20 par
value.

Application No. 23697

BY THE COMMISSION:

O P I N I O N

This application involves the amendment of the Articles of Incorporation of San Diego Gas & Electric Company and the issue by said company of 314,625 shares of cumulative preferred stock, 5% Series, \$20 par value for the purpose of refunding 7% cumulative preferred stock or to obtain funds to redeem said 7% cumulative preferred stock.

San Diego Gas & Electric Company, hereinafter some times referred to as applicant, has outstanding \$10,032,500 par value of common stock and \$6,292,500 par value of 7% cumulative preferred stock. The preferred stock is divided into 62,925 shares of the par value of \$100 each. It is redeemable at \$115 per share and accrued dividends.

Applicant on September 25, filed a copy of its amended Articles of Incorporation. Under such Articles of Incorporation,

applicant is authorized to issue three classes of stock, to-wit:

- (1) Seven per cent cumulative preferred stock
- (2) Cumulative preferred stock
- (3) Common stock

Applicant has an authorized stock issue of \$36,292,500 par value or 2,312,925 shares divided as follows:

- (1) Seven per cent cumulative preferred, 62,925 shares of \$100 par value per share
- (2) Cumulative preferred, 750,000 shares of \$20 par value per share
- (3) Common, 1,500,000 shares of \$10 par value per share

The holders of shares of each class and of each series shall be entitled to vote on all questions. Each shareholder shall be entitled to one vote for each \$10 par value of stock held by such holder. If and whenever, dividends accrued and unpaid on the outstanding cumulative preferred stock, or any series thereof, equal or exceed an amount equivalent to eight full quarterly dividends on all shares of any series of the cumulative preferred stock at the time outstanding, then until all dividends in default on the cumulative preferred stock shall have been paid, or declared and set aside, the holders of the cumulative preferred stock, voting separately as one class, shall be entitled to elect the smallest number of directors necessary to constitute a majority of the full board of directors. The holders of the common stock voting as a class are entitled to elect the remaining members of the Board of Directors.

None of the shares of the 7% cumulative preferred stock redeemed, or otherwise acquired by applicant, shall ever again be issued by applicant, but all of such shares shall cease

from the date of such redemption or other acquisition to be a part of the authorized shares of applicant.

Applicant's amended Articles of Incorporation provide that the 750,000 shares of cumulative preferred stock shall be divided into two series, the first to be designated, "Cumulative Preferred Stock, 5% Series, \$20 par value," and the second to be designated "Series B" or such other designation as may be legally fixed by applicant's board of directors.

The 5% Series, \$20 par value stock is redeemable at the option of the Board of Directors, at any time, in whole or in part, on thirty days' notice, by paying or providing for the payment of \$25 per share, if payment is made on or before October 1, 1943, and \$24 per share, if payment is made thereafter, together with accrued dividends on each share redeemed. In the event of the voluntary liquidation of the company, before any payments are made to the holders of common stock, the holders of the 5% Series, \$20 par value stock shall be entitled to receive \$25 per share if payment is made on or before October 1, 1943 and \$24 per share if payment is made thereafter, together with accrued dividends thereon to the date of such payment. In the event of any involuntary liquidation, the holders of such stock shall receive \$20 per share and accrued dividends to the date of payment.

The amended Articles of Incorporation contain other terms and conditions applicable to the stock of San Diego Gas & Electric Company.

Applicant intends to call for redemption at \$115 per share and accrued dividends, all of its outstanding 7%

preferred stock. It will offer its "Cumulative Preferred Stock, 5% Series, \$20 par value," hereinafter some times referred to as 5% preferred stock, to the holders of its 7% preferred^{stock} on the basis of five shares of the 5% preferred stock, or an aggregate of \$100 par value, for each share of 7% preferred stock of the par value of \$100, together with cash in an amount equal to the accrued and unpaid dividends on the date of issuance of the 5% preferred stock. If the holders of one-half (31,462 shares) of the outstanding 7% preferred stock will accept applicant's offer, it proposes to sell the remainder of the 314,625 shares of the 5% preferred stock to underwriters at a price to net it \$23 per share plus accrued dividends, if any, less underwriting commissions. The underwriting commissions are computed upon two bases. The minimum is estimated at \$51,126.75 and the maximum at \$137,649.25. The actual underwriting commissions are dependent upon the number of shares of the 5% preferred stock that will be exchanged for the 7% preferred stock. In addition, applicant estimates its expenses incident to the issue of said 5% preferred stock at \$40,000. On the basis of the maximum underwriting commissions and the estimated expenses, the 5% preferred stock will be issued by applicant on about a 4½% basis.

Applicant asks permission to credit the amount of the premium received by it from the sale of the 5% preferred stock to paid-in or capital surplus, so that it may use said premium received to pay the premium upon the 7% preferred stock redeemed. Section 300b of the Civil Code provides that if par value shares are issued for a consideration in excess of the par

value thereof, the amount of such excess shall be credited to paid-in surplus.

We will permit applicant for accounting purposes to credit to capital surplus the premium it will receive upon the issue of its 5% preferred stock, and to charge to capital surplus the premium it must pay upon the redemption of its 7% preferred stock. By granting applicant such permission, we do not admit that it is issuing its 5% preferred stock on a 5% basis. The stock is being issued at a premium or on a basis of less than 5%.

Applicant's balance sheet shows preferred stock discount and expense less premium of \$477,567.50. Upon the refunding of applicant's 7% preferred stock, as herein indicated, the \$477,567.50 should be charged to earned surplus. There is a further contingent charge to such surplus because of the premium applicant agrees to pay if it redeems its "Cumulative Preferred Stock, 5% Series, \$20 par value." These premiums have been determined by applicant and not by the Commission.

ORDER

The Commission having considered the request of San Diego Gas & Electric Company and it being of the opinion that this is not a matter on which a hearing is necessary, that the money, property or labor to be procured or paid for by the issue of 314,625 shares of "Cumulative Preferred Stock, 5% Series, \$20 par value" is reasonably necessary for the purposes specified in this order and that said purposes are not in whole, or in part, reasonably chargeable to operating expenses or to

income, and that this application should be granted as herein provided, therefore

IT IS HEREBY ORDERED as follows:

1. San Diego Gas & Electric Company may, on or before December 31, 1940, amend its Articles of Incorporation in form similar to the amended Articles of Incorporation filed in this proceeding on September 25, 1940.

2. San Diego Gas & Electric Company may, after the effective date hereof and on or before December 31, 1940, issue 314,625 shares of "Cumulative Preferred Stock, 5% Series, \$20 par value," and exchange said shares of stock or any part thereof for its outstanding 7% preferred stock on the basis of five shares of said "Cumulative Preferred Stock, 5% Series, \$20 par value" for one share of said 7% preferred stock, \$100 par value, or sell said 314,625 shares of said "Cumulative Preferred Stock, 5% Series, \$20 par value," or any part thereof at not less than \$23 per share and use the proceeds to redeem and retire all or part of its outstanding 7% preferred stock.

3. The order in Decision No. 30269, dated October 25, 1937, as amended by Decision No. 30339, dated November 15, 1937, be, and the same is, hereby modified so as to permit San Diego Gas & Electric Company to transfer the premium which it will receive upon the issue, exchange, and sale of said 314,625 shares of "Cumulative Preferred Stock, 5% Series, \$20 par value" to capital surplus and charge against said capital surplus the premium which it will be required to pay upon the redemption of its 7% preferred stock.

4. The authority herein granted to issue stock will become effective when San Diego Gas & Electric Company has filed with the Railroad Commission a copy of its amended Articles of Incorporation, certified by the Secretary of State of the State of California.

5. Within thirty (30) days after the effective date of the registration statement filed with the Securities and Exchange Commission, San Diego Gas & Electric Company shall file with the Railroad Commission a complete copy of such registration statement, including all exhibits filed in connection therewith.

6. Within sixty (60) days after the issue, exchange, and sale of the stock herein authorized San Diego Gas & Electric Company shall file with the Railroad Commission a statement showing in detail the expenses incurred by it in connection with the issue, exchange, and sale of said stock, and shall also file with the Railroad Commission a report in compliance with the Commission's General Order No. 24-A, which order insofar as applicable, is made a part of this order.

Dated at San Francisco, California, this 26th day of September, 1940.

Ray H. Riley
Frank R. Walker
Robert W. ...
...
Justus J. Green
Commissioners.