

LEM

Decision No. 15894.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
FEATHER RIVER POWER COMPANY,
a corporation, organized and existing
under and by virtue of the laws of the
State of California for a certificate
of public convenience, to develop and
generate hydroelectric energy at pro-
posed Buck's Creek power house, situa-
ted in Plumas County, State of Califor-
nia, to sell, transmit and distribute
the same; and for an order authorizing
the sale by said Feather River Power
Company of its electric plant when
completed to the Great Western Power
Company of California, and for an order
approving the contract between the said
Feather River Power Company and Robert C.
Storrie, Robert B. Muir and R. C. Storrie
and Company, as contractors, and First
Securities Company, for the construction
of said project; and for an order permit-
ting said Feather River Power Company to
issue its bonds in the aggregate par val-
ue of \$5,500,000. and to issue to said
Robert C. Storrie, Robert B. Muir and
Said R. C. Storrie and Company of its
Class "A" preferred capital stock of the
par value of \$1,000,000. and its Class
"B" preferred stock in the aggregate par
value of \$2,000,000. and to issue also
its common stock in accordance with the
terms of the said contract for the con-
struction of said project.

ORIGINAL

Application No. 11414

Gibson, Dunn and Crutcher, by Norman S. Sterry
and Homer D. Crotty.

and

Erb and Bryan, for Feather River Power Company.

Chaffee E. Hall, for Great Western Power Company
of California.

SEAVEY, Commissioner:

OPINION

The Railroad Commission is asked to declare that public
convenience and necessity require and will require Feather River Power
Company to construct, maintain and operate the hydroelectric power

plant and appurtenances to which reference is made in this application and decision. The Commission is also asked to make an order approving a power sale contract, a construction contract, authorizing the issue of \$3,041,889.00 par value of stock and \$5,500,000.00 ^{serial} face value of first mortgage six percent./gold bonds and the execution of a mortgage or deed of trust to secure the payment of such bonds, and the sale of the electric plant of Feather River Power Company when completed, to Great Western Power Company of California. Great Western Power Company of California asked and was granted permission to be a party to this application insofar as the contract between it and Feather River Power Company is concerned.

Feather River Power Company is a corporation recently organized and existing under and by virtue of the laws of the State of California. It has an authorized stock issue of 40,000 shares divided as follows:-

10,000 shares Class "A" seven percent cumulative preferred stock
20,000 shares Class "B" seven percent. cumulative preferred stock
10,000 shares of common stock;

each share of all classes being of \$100. per share.

Feather River Power Company asks permission to construct, maintain and operate a hydroelectric power plant and appurtenances. The power house is to be located on the North Fork of the Feather River, a short distance below the mouth of Buck's Creek. Two generating units of 20,000 K.W. are to be installed. Water to operate these units is to be obtained from the drainage area of Buck's Creek, Grizzly Creek Ranch and Milk/Creek. It is proposed to create a storage reservoir of 103,000 acre feet in Buck's Valley, by constructing a storage dam about 113 feet high at an elevation of 5143 feet. There is to be constructed in Buck's Creek at an elevation of 4970 feet a diversion dam, diverting the waters through a tunnel about 6200 feet long 6.3' x 8.0' to Grizzly Creek. At the end of the tunnel there is to be constructed a 5,000 acre foot storage reservoir. From Grizzly Creek the waters will be taken through a tunnel 9670 feet long 8' x 8' to the penstocks. The

penstocks from the end of the tunnel to the power house will be about 4700 feet long. The two generating units will be operated under a head of 2550 feet. A diversion conduit is to be constructed to carry the waters from Milk Ranch Creek to the diversion reservoir on Buck's Creek, such conduit to have a capacity of 75 second feet. It is estimated by applicant that the power plant will produce 205,000,000 K.W.H. of electrical energy annually.

R. C. Storrie and Company have agreed to construct the power plant, dam and all appurtenances and to acquire the rights and lands necessary for such construction at a cost of \$7,691,889.00, payable part in cash and part in stock, as will appear hereafter. Applicant in its Exhibit G-3 estimates the actual cost of its Buck's Creek project at \$6,554,000.00. R.B.Muir of R.C.Storrie and Company testified that he calculated their actual cash expenditure at something over \$6,000,000.00. In reply to questions of his counsel, he stated that the \$6,000,000.00 did not include interest during construction, legal cost and organization expenses. He, however, offered no figures showing how much additional would have to be expended for such purposes. It is not incumbent upon the Commission to supply this missing data.

The company has entered into a contract with the Great Western Power Company of California whereby the Feather River Power Company agrees to sell and the Great Western Power Company of California agrees to buy the plant about to be constructed and known as Buck's Creek Project. Under the terms of the contract, payment for the property is to extend over a period of thirty-five years, during which time the Great Western Power Company of California agrees to purchase the whole of the electric energy produced at the plant and to pay for such energy at the rate of four mills per K.W.hour. The price of four mills per K.W.hour which the Great Western Power Company of California is to pay includes both the cost of the energy furnished and payments on account of the purchase price of the property. No division is made in the contract showing how much of the four mills

represents the cost of the energy and how much represents payments on account of the purchase of the property. Upon the termination of the contract the power plant and all appurtenances will become the properties of the Great Western Power Company of California regardless as to how much stock or bonds may at that time be outstanding. It should be noted in this connection that the present stockholders of the Feather River Power Company and not those who may hereafter purchase stock of that company, have agreed to sell the plant for the price mentioned, and that purchasers of stock of the company will be bound by the agreement.

The Feather River Power Company asks permission to issue \$1,000,000 of its Class "A" seven percent cumulative preferred stock, \$2,000,000. of its Class "B" seven percent cumulative preferred stock, \$41,889.00 of common stock and \$5,500,000.00 of first mortgage six percent serial gold bonds. The construction contract between the Feather River Power Company and R. C. Storrie and Company provides that before the contractors shall receive any money they shall expend on the project \$1,450,000.00 for the following purposes:-

To acquire 3000 acres of meadow land and improvements	\$350,000.
Rights of way for main line spur and diversion canals	50,000.
Construction of 2-1/2 miles main line spur extending from Western Pacific at Tobin to power house	175,000.
Tramway including all equipment and clearing of penstock site (length of tramway 5500')	105,000.
Tunnel plant complete including all compressors, hoisting machinery, ventilating system, water supply, excavating machinery, lighting system, etc.	300,000.
Camp buildings and housing facilities and equipment for the care of 400 men	50,000.
Operators cottages, sanitation, fire protection, warehouses, water and light system at plant	120,000.
All necessary roads to main damsite from Quincy, totaling ten miles	50,000.
Cement credit for all cement necessary amounting to 50,000 barrels at \$2.18 per bbl. fob plant	130,800.
Explosive credits	120,000.
Total.....	<u>\$1,450,000.</u>

For the \$1,450,000.00 they shall receive \$1,450,000.00 of Class "B" stock at par. W. A. Brackenridge in his report (applicant's Exhibit G-2) estimates the cash value of the above expenditures at \$1,000,000. There was no evidence submitted to show that Mr. Brackenridge's figures are in error. Of the remainder of the contract price, namely \$6,241,889., seventy-five percent shall be paid in cash

obtained from the sale of bonds, 25 percent in Class "A" and "B" stock to be accepted by the contractor at par and common stock to be accepted by the contractor at 25 percent of its par value. On the basis of the contract price, \$7,691,889.00, applicant would issue \$5,500,000.00 of bonds, \$1,000,000.00 of Class "A", \$2,000,000.00 of Class "B" and \$41,889.00--say \$42,000.00--of common stock, making a total stock and bonds of \$8,542,000.00.

The company asks permission to sell the bonds at 90 percent of their par value. The underwriter has agreed to purchase from R.C. Storrie and Company the Class "A" stock at 82. On this basis, \$5,770,000.00 of cash will be made available to R. C. Storrie and Company through the issue of Class "A" stock and bonds of Feather River Power Company. Whatever additional cash is needed to pay for the project will have to be advanced by R.C. Storrie and Company or obtained by them from the sale of Class "B" stock or common stock. As stated, R. B. Muir testified that he calculated the actual cost of the plant to be somewhat in excess of \$6,000,000.00. Comment has already been made on the fact that he did not submit any definite figures showing the amount of interest during construction or legal or organization expenses. The Feather River Power Company estimates the cost of the power plant and appurtenances, exclusive of land, at \$6,429,760.00. The evidence on land value is so incomplete that little ^{weight} can be attached thereto. On the basis of the contract price the stocks and bonds which applicant asks permission to issue would be issued at an average price of 90. If the Brackenridge figures as to the cost of the plant are accepted, they would be issued on a basis of 77, while if the plant were to cost in the neighborhood of \$6,000,000.00 they would be issued on an average basis of 70. There is nothing in the record to show that the acquisition or construction of the properties will actually amount to the contract price of \$7,691,889.00, yet the Commission is asked to approve a contract and thereby recognize that figure as the cost of the project. The contract has not been awarded under competitive bidding. The

record shows that the contractor has an interest in this project other than constructing the same. While the extent of such interest is not disclosed, the contract does have the earmarks of an old time practice which has repeatedly come into disfavor. We will not approve the construction contract, but indicate the amount of stock and bonds which the Feather River Power Company may be permitted to issue to finance the acquisition and construction of the hydroelectric power project referred to herein.

The testimony of several of applicant's witnesses is to the effect that the earnings of the property should be sufficient to retire within a period of thirty-five years all of the bonds now sought to be issued, all of Class "A" stock and all of Class "B" stock, together with interest and dividends on such bonds and stock. Emphasis was also placed upon the fact that a faithful performance bond of \$3,000,000.00 and a mechanics lien bond of \$3,850,000.00 have been entered into and that the construction of the project is assured.

The deed of trust which applicant asks permission to execute provides, among other things, that so long as any bonds are outstanding, all money received by the company under its contract with the Great Western Power Company of California shall be paid to the trustee, Pacific Southwest Trust and Savings Bank and shall be expended for the following purposes and in the following manner:

- First: To the payment of all taxes, as hereinafter defined.
- Second: To the payment of all operating expenses, as hereinafter defined.
- Third: To the payment of all installments of principal and interest upon the bonds issued hereunder and secured hereby, as they severally mature.
- Fourth: To the repayment to the Trustee and/or the Underwriter of any and all moneys at any time advanced by the said Trustee and/or the Underwriter for the payment of any tax as hereinafter defined, and/or operating expense, as hereinafter defined, and/or installment or installments of interest and/or principal of the bonds issued hereunder, and/or for the completion and/or the repair of the said project, (other than moneys which have been paid by the Underwriter to the Trustee in purchase of the said bonds issued hereunder and secured hereby and/or to the con-

structors in payment of the Class "A" preferred stock, as provided for in said construction contract,] together with interest on each such advance at the rate of seven percent per annum from the time of each advance until the repayment thereof. (It being understood and agreed if at any time it becomes apparent to the Trustee and/or the Underwriter that the said Trustee probably will not be able to pay from the funds of the River Company, any tax, operating expense and/or installment of principal and/or interest on the bonds secured hereby when such tax becomes delinquent, or such operating expense becomes due or such installment of principal and/or interest on bonds issued hereunder matures, then the said Trustee and/or the Underwriter, without being obligated so to do, may, before default of the River Company occurs because of or on account of the inability of the Trustee to pay such tax, operating expense and/or installment of principal and/or interest on such bonds, advance sufficient moneys to pay such tax, operating expense and/or installment of principal and/or interest on bonds issued hereunder; or the said Underwriter, and Trustee, may wait until such default has occurred and then without affecting the rights of the parties hereunder because of and on account of such default, pay the said tax, operating expense and/or installment of principal and/or interest on the bonds hereunder.)

Fifth: To the payment for and on behalf of the River Company of dividends upon and retirement of the Class "A" preferred stock, as hereinafter provided.

Sixth: To the creation and maintenance of a reserve fund in the sum of Five Hundred Thousand Dollars (\$500,000.00) as hereinafter provided.

Seventh: The surplus, if any, to the River Company or its order."

The record in this proceeding does not warrant the issue of \$8,542,000.00 of bonds and stock. It is my opinion that the Feather River Power Company should be authorized to issue not exceeding \$5,250,000.00 of bonds and not exceeding \$2,350,000.00 of stock, both bonds and stock to be sold at not less than 90 percent of their par value. In my opinion the management of the company should be permitted to determine the amount of each class of stock to be issued, the aggregate of such issue not to exceed \$2,350,000. and none to be issued at less than 90 percent of its par value.

I herewith submit the following form of order:-

O R D E R

Feather River Power Company, having applied to the Railroad Commission for permission to construct, operate and maintain a hydroelectric power project referred to in this application and in the foregoing opinion, and having asked the Commission for permission to enter into a construction contract, a power sale contract and the issue of \$5,500,000.00 of bonds and \$3,042,000.00 of stock and the execution of a deed of trust, 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 the issue of \$5,250,000.00 of bonds and \$2,350,000.00 of stock, is reasonably required by applicant, and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expenses or to income, and that public convenience and necessity require Feather River Power Company to construct, operate and maintain the hydroelectric power plant referred to in this proceeding.

THE RAILROAD COMMISSION HEREBY DECLARES that public convenience and necessity require and will require the Feather River Power Company to construct, operate and maintain the hydroelectric power project referred to in this proceeding.

IT IS HEREBY ORDERED that Feather River Power Company be, and it is hereby, authorized to issue and sell at not less than 90 percent of their face value and accrued interest \$5,250,000.00 of its first mortgage six percent serial gold bonds and \$2,350,000.00 of its stock divided into such classes as applicant may determine, such stock to be sold for not less than 90 percent of its par value and use the proceeds obtained from the sale of the bonds and stock to pay the cost of constructing the hydroelectric power project

referred to in this proceeding, said bonds and stock to be issued and sold on or before December 31, 1926.

IT IS HEREBY FURTHER ORDERED that Feather River Power Company shall amend its stock certificates so that they will show that the Buck's Creek project described in Application No. 11414 filed with the Railroad Commission, under and by virtue of the contract for the sale of power dated June 24, 1925, amended July 17, 1925 (Exhibits "D-1" and "D-2") will upon the termination of said contract become the property of Great Western Power Company of California, regardless of the amount of stock then outstanding.

IT IS HEREBY FURTHER ORDERED that Feather River Power Company be, and it is hereby, authorized to execute a mortgage or deed of trust substantially the same as the mortgage or deed of trust filed in this proceeding, provided that the authority herein granted to execute such mortgage or deed of trust is for the purpose of this proceeding only and is granted only in so far as the Railroad Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of such mortgage or deed of trust as to such other legal requirements to which said mortgage or deed of trust may be subject, provided further that the provisions of said mortgage or deed of trust be modified so as not to be inconsistent with any provisions of this order.

IT IS HEREBY FURTHER ORDERED that Feather River Power Company and Great Western Power Company of California be, and they are hereby, authorized to execute an agreement (contract for sale of property and power) substantially in the same form as the agreement filed in this proceeding and marked "Exhibit D-1" and "Exhibit D-2".

IT IS HEREBY FURTHER ORDERED that Feather River Power Company shall keep a true and accurate record of the moneys actually

expended in acquiring and constructing the properties necessary to complete the hydroelectric power project referred to in this proceeding and shall as a condition precedent to the exercise of any authority herein granted, file with the Railroad Commission a duly and legally executed stipulation agreeing to keep such records and file with the Commission a statement showing the actual amount of money (as distinguished from the amount of stock and bonds issued) expended to acquire and construct said project, said amount to be segregated and charged to fixed capital accounts now prescribed by the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that the authority herein granted to issue bonds will become effective when Feather River Power Company has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is \$3,125.00.

IT IS HEREBY FURTHER ORDERED that Feather River Power Company shall file three copies of its mortgage or deed of trust and three copies of each class of its stock certificates, said documents to be filed as soon as available for distribution.

IT IS HEREBY FURTHER ORDERED that Feather River Power Company shall keep such record of the issue and sale of the stock herein authorized and of the disposition of the proceeds as will enable it to file on or before the 25th day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order in so far as applicable, is made a part of this order.

IT IS HEREBY FURTHER ORDERED that the above entitled application in so far as it relates to the issue of \$250,000.

face value of bonds and \$691,889.00 par value of stock, be dismissed without prejudice.

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 15th day of September, 1925.

C. Seaver
Edward J. [unclear]
Leon Whitell
Commissioners.

Supplemental
FREE PAID ON ORIGINAL APPLICATION

No. 11414 Decision No. 15465

Dated 25 Sept 19 25

H. M. [unclear]

Secretary Railroad Commission,
State of California.