

Decision No. 17707.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 GREAT WESTERN POWER COMPANY OF CALIFORNIA)
 for authority to issue and sell)
 \$1,000,000. par value of six percent)
 preferred stock and \$2,500,000. par)
 value of common stock.)

Application No. 13312

Gay C. Earl and Chaffee E. Hall,
 for applicant.

BY THE COMMISSION:

ORIGINALOPINION

Great Western Power Company of California has applied to the Railroad Commission for permission to issue and sell to the public 10,000 shares of its six percent preferred stock, of the aggregate par value of \$1,000,000., at not less than \$93. a share net, and also to issue and sell to Western Power Corporation 25,000 shares of its common capital stock, of the aggregate par value of \$2,500,000., at the price of \$50. a share net.

Applicant's authorized and outstanding capital stock, as of December 31, 1925, is reported as follows:-

<u>Class of stock</u>	<u>Authorized</u>	<u>Outstanding</u>
Preferred Series "A" six percent	\$15,000,000.00	\$ 915,500.00
Preferred seven percent	15,000,000.00	12,111,784.21
Common	50,000,000.00	27,500,000.00
Total.....	<u>\$60,000,000.00</u>	<u>\$40,527,084.21</u>

Since December 31, 1925, the company has issued additional preferred stock of both classes, reporting its total outstanding preferred stock, as of September 30, 1926, at \$15,129,100., and preferred stock subscriptions at \$1,545,500.

In making the present request to issue additional preferred and common stock, the company asks permission to use the proceeds for the purposes specified in Decision No. 16091, dated March 8, 1926, in Application No. 12518.

In that decision the Commission authorized the company to issue and sell \$2,000,000. of six percent preferred stock for the purpose of obtaining funds to reimburse its treasury because of expenditures for capital purposes made prior to January 1, 1926, and to finance in part the cost of additions and betterments and extensions it was estimated would be made during 1926.

In its application the company had reported expenditures theretofore made and estimates of certain work then in progress of \$7,990,795.86, estimated expenditures for the year 1926 of \$5,022,552.67, and expenditures made in retiring certain bonds of \$330,696.75, the three items aggregating \$13,344,045.28. From This amount it deducted \$6,155,033., representing the proceeds received, or to be received, from the sale of stock theretofore authorized, leaving a balance of \$7,189,012.28, against which no securities had been issued. The Commission in passing on the petition, deducted \$125,000. on account of expenditures in connection with the application filed by the City and County of San Francisco for an order fixing and determining the just compensation to be paid for its San Francisco properties and the \$330,696.75 alleged to have been used to retire bonds. These deductions left a balance of \$6,733,315.53, against which the

company was authorized to issue its stock. For a description of the various items making up the expenditures and a statement of the method used in arriving at the \$6,733,315.53, reference should be made to the former decision, No. 16091. (Vol. 27, Opinions and Orders of the Railroad Commission of California, page 707).

The decision permitted the issue and sale of the \$2,000,000 of stock to provide in part the \$6,733,315.53. From records on file with the Commission, under General Order No. 24, it appears that the stock is being sold at 95 percent of par value. Should the entire amount be disposed of at this price the company will receive in cash the sum of \$1,900,000.00. Deducting this from the \$6,733,315.53 leaves a balance of \$4,833,315.53 unprovided and on account of which the present application to issue stock is made.

At the hearing held in this matter, J. B. Black, applicant's vice-president and general manager, testified that the company had outstanding certain indebtedness in favor of Western Power Corporation amounting to about \$2,061,000.00, and notes in favor of Anglo & London, Paris National Bank in the principal amount of \$750,000., and that in his opinion the proceeds to be received from the sale of the stock now requested would be used in part to meet this indebtedness.

In connection with the request to issue and sell the remaining authorized but unissued common stock to Western Power Corporation at fifty percent of its par value, it appears that all of the now outstanding \$27,500,000.00 of common stock is held by that corporation which thus controls applicant through stock ownership. This stock was issued under authority granted by Decision No. 2985, dated December 20, 1915, in Application No. 1999. (Vol. 8, Opinions and Orders of the Railroad Commission of Calif., Pages 752, 777-778) In that decision the Commission says--

"The Commission desires to be of all possible assistance to Great Western Power Company of California in its financing but at the same time naturally hesitates to give unconditional

authority, as long as par value remains on California stock, for the issue of capital stock, unless it is convinced that the capital stock represents value in accordance with the principles heretofore established in this Commission's decisions.

Great Western Power Company of California has expressed a willingness to issue certificates of stock in such form that the Commission's consent to the issue thereof may not be misconstrued. The order herein will accordingly provide that each certificate of the common capital stock issued by Great Western Power Company of California under the order herein or in transfers thereof shall contain, in the body of the certificate, the following language:-

'This certificate of stock has been issued pursuant to Decision No. 2985, rendered on December 20, 1915, by the Railroad Commission of the State of California, in Application No. 1999. In said decision the Railroad Commission states that the issue of this stock is authorized only because of the practical necessity of exchanging the same for a like amount of stock of Great Western Power Company, issued before the law of California required the Railroad Commission's consent to the issue of capital stock by public utilities. The Railroad Commission of the State of California in said decision states that it has been unable to ascertain to what extent, if at all, the capital stock of Great Western Power Company, at the time of its issue, represented tangible value.'

It should be distinctly understood that the Railroad Commission's action in authorizing the issue of the common capital stock as herein requested, must not be taken as a precedent. Authorization is being made solely because the capital stock of Great Western Power Company was issued prior to the effective date of the Public Utilities Act and is now outstanding, and because applicant herein earnestly insists that the exchange of an equivalent amount of its common capital stock for the stock of Great Western Power Company now held by the New Jersey corporation, is a condition precedent to the success of further satisfactory financing by Great Western Power System."

The only evidence submitted by applicant in support of its request to issue 25,000 shares of common stock at fifty dollars per share is the following:- (Transcript pages 3-4.)

Question: (by Chaffee E. Hall, counsel for applicant)- With respect to the two and a half million par value of common stock, that is all of the common stock of the company now remaining unissued, is it not?

Answer: (by J.B.Black, Vice-President and General Manager)- That is correct. Yes.

Question: And the Western Power Corporation has offered to purchase that stock at \$50. a share?

Answer: Yes.

Question: If issued, this will be the first common stock that has been sold other than the exchange of the \$27,500,000. at the time of the organization of the Great Western Power Company of California, since the Commission has had jurisdiction over the sale of the common stock-----

Answer: That is correct.

Question: ---Stocks of utilities

Answer: This is correct.

Question: And do you believe this proposed price of \$50. per share is a fair price?

Answer: I do, yes.

Question: Now, the company is now earning roughly somewhere in the neighborhood of five dollars per share on its common stock.

Answer: Yes, I think it will be a little under that this year, somewhere between \$4.50 and \$5.00 a share on the present outstanding.

This is all the evidence that was submitted by applicant to justify the price at which it proposes to sell its stock. True, in response to a question by the presiding examiner, J. B. Black stated that it was difficult to determine the price and that he knew of no justification other than earnings for any one to invest money in common stock.

This Commission has never authorized the issue of stock at a price as low as fifty unless perchance it be the common stock of applicant now outstanding. In the decision authorizing the issue of such stock the Commission stated, however, that its action should not be considered as a precedent, and gave the reason why it authorized the issue of such stock. The frequent appearance of representatives of applicant before the Commission, the fact that Decision No. 2985 from which we have quoted herein, involved the issue of common stock by applicant, warrants us to conclude that they have at least a general familiarity with the policy of the Commission in regard to the price at which it permits utilities to issue stock. Be that as it may, the only evidence submitted by applicant to support its request to issue stock at fifty, is that quoted herein. This we regard as wholly insufficient.

It is not incumbent upon the Commission's representatives to develop an applicant's case. The practise of some applicants to ask their witnesses a few perfunctory leading questions and then dismiss them with the suggestion that if the Commission desires any additional information, let its representatives ask the questions, does not meet with the approval of the Commission. We expect an applicant to make such affirmative showing in support of its requests as will warrant the Commission to make the findings it is expected to make, and not impose on the Commission the duty to make such showing either by cross examination or direct testimony.

The evidence submitted does not justify this Commission to enter its order authorizing the company to issue 25,000 shares of stock (\$2,500,000.00 par value) at \$50. per share.

O R D E R

Great Western Power Company of California, having applied to the Railroad Commission for permission to issue \$1,000,000. of six percent preferred and \$2,500,000. of common stock, a public

hearing having been held before Examiner Fankhauser, and the Railroad Commission being of the opinion that applicant's request to issue \$2,500,000.00 of common stock should be denied without prejudice, and that the money, property or labor to be procured or paid for through the issue and sale of said preferred stock is reasonably required for the purposes specified herein, and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED that Great Western Power Company of California be, and it hereby is, authorized to issue and sell on or before December 31, 1927 \$1,000,000.00 of its six percent cumulative preferred stock at not less than 98 percent of par value and use of the proceeds an amount equal to not more than three and one half percent of the par value of the stock sold to pay commissions and expenses incident to the sale of said stock. The remainder of the proceeds, together with such portion of the three and one half percent not needed for said purposes shall be used by applicant to reimburse its treasury or to pay outstanding indebtedness and finance, in part, the expenditures referred to in the foregoing opinion.

The authority herein granted is subject to the following conditions:-

1. Only such expenditures as are properly chargeable to fixed capital accounts as defined by the Uniform Classification of Accounts prescribed by the Railroad Commission may be financed with the proceeds obtained from the issue and sale of the stock herein authorized.
2. Applicant shall keep such record of the issue and sale of the stock herein authorized and of the disposi-

