

Decision No. 21544

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 DELTA WAREHOUSE COMPANY, )  
 seller, and Pacific Gas and Electric )  
 Company, purchaser, of property known )  
 as Delta Warehouse No. 2, Stockton, )  
 California, for authorization and )  
 permission of such sale and transfer; )  
 and for lease of the same property )  
 by Delta Warehouse Company from )  
 Pacific Gas and Electric Company. )

ORIGINAL

Application No. 15661.

E. D. Wilkinson, for  
 Delta Warehouse Company,  
 C. P. Cutten and R. W. DuVal,  
 by R. W. DuVal, for  
 Pacific Gas and Electric Company.

BY THE COMMISSION:

O P I N I O N

In this proceeding the Railroad Commission is asked to make its order authorizing Delta Warehouse Company to sell certain properties to Pacific Gas and Electric Company, and Pacific Gas and Electric Company to lease the same properties to Delta Warehouse Company. The properties are described as follows:

All that real property, together with the appurtenances situate in the City of Stockton, County of San Joaquin, State of California, and more particularly described as follows, to-wit:

Block Sixteen and Two-Thirds (16 2/3)  
 West of Center Street, according to the  
 Official Map or Plat of the City of Stockton.

Delta Warehouse Company is a corporation engaged as a public utility in the business of storing grain in the City of Stockton. It appears that in April, 1928, it sold to Pacific Gas and Electric Company for the cash sum of \$60,000.00, the aforesaid properties, which consist of a parcel of real estate and a brick warehouse building, approximately 200 by 300 feet in dimension, known as Delta Warehouse No. 2,

and, at or about the same time, under an agreement dated May 1, 1928, leased such properties from Pacific Gas and Electric Company for a term of thirteen months and ten days, commencing April 21, 1928 and ending May 31, 1929, at the monthly rental of \$300.00, with provision made for the tenancy of the properties by Delta Warehouse Company subsequent to the termination of the lease on a month to month basis at the monthly rental of \$300.00. This amount since has been reduced to \$200.00 a month.

The companies did not obtain permission from this Commission to sell or lease the properties. It appears, however, that their failure to do so was through inadvertence and with no intent to evade the provisions of the Public Utilities Act. When the matter of the necessity of obtaining the Commission's approval was brought to their attention, they filed this present application requesting the Commission's approval and presented evidence indicating, in our opinion, that the two transactions will not adversely affect the public interest. On this point, E. D. Wilkinson, the secretary of Delta Warehouse Company, testified that in the event of the termination of the lease arrangements with Pacific Gas and Electric Company, the remaining facilities of Delta Warehouse Company would be ample to take care of all goods offered it for storage. The testimony herein further shows that Pacific Gas and Electric Company has purchased the properties for use, in the future, in the expansion of its gas facilities and properties in the City of Stockton. The properties are adjacent to other properties it now owns and, it is reported, are suitable as a site for gas holders and other equipment necessary in the gas business.

In reviewing the record, then, it appears to us that we should authorize the transfer and lease of the properties referred to herein. Although these transactions were made in April, 1928, the attention of applicants is directed to Section 51 (a) of the Public

Utilities Act, which provides in part that every sale, lease, assignment, mortgage, disposition, encumbrance, merger or consolidation of properties necessary or useful in public utility business made other than in accordance with an order of the Commission authorizing the same shall be void. The Act makes no provision for the validation or ratification by the Commission of unauthorized transactions after they have been made and, in our opinion, the approval of the Commission is a condition precedent to the transfer, or lease, of utility property. We believe, therefore, that the parties must execute new instruments following the effective date of the order in this matter, if they desire to transfer or lease the properties. The action of the Commission in matters of this nature is, of course, permissive only and in no way mandatory upon the parties to sell or lease properties.

#### ORDER

Application having been made to the Railroad Commission for an order authorizing the sale and lease of public utility property, a public hearing having been held before Examiner Gannon, and the Railroad Commission being of the opinion that the granting of the application, as herein provided, is not contrary to the public interest and that an order should be entered accordingly,

IT IS HEREBY ORDERED that Delta Warehouse Company be, and it hereby is, authorized to sell to Pacific Gas and Electric Company the real property and warehouse building known as Delta Warehouse No. 2, referred to in the foregoing opinion and described in this application, and Pacific Gas and Electric Company be, and it hereby is, authorized to lease such property and building to Delta Warehouse Company, in accordance with the terms and conditions of the agreement between the two companies, dated May 1, 1928, provided that the price which the Pacific Gas and Electric Company has agreed to pay for the properties will not

be urged before this Commission as a measure of the value of said properties for any purpose, other than the transfer herein authorized.

IT IS HEREBY FURTHER ORDERED that the authority herein granted will become effective from and after ten days from the date hereof.

DATED at San Francisco, California, this 17<sup>th</sup> day of September, 1929.

Pho. O. Lott  
Charles  
Emm. D. ...  
Leon Whittell  
M. J. ...  
Commissioners.