

LBM

Decision No. 21852.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
IRE JONES and SELMA K. JONES)
to sell the water system known as)
Elk Grove Water Company to Public)
Utilities California Corporation,)
and of Public Utilities California)
Corporation to acquire and operate) Application No. 15892
said water system and to issue Forty-)
two Thousand Dollars (\$42,000.00))
par value of its capital stock in)
connection with the acquisition of)
said water system.)

Orrick, Palmer and Dahlquist, by R. W. Palmer
and J. M. Jacobs, for Public Utilities
California Corporation.

Ira Jones, in propria persona.

BY THE COMMISSION:

O P I N I O N

In this application the Railroad Commission is asked to enter its order approving the transfer of the properties of Ira Jones and Selma K. Jones, operated under the name of Elk Grove Water Company, to Public Utilities California Corporation, the acquisition and operation of said properties by said Public Utilities California Corporation, and authorizing Public Utilities California Corporation to issue \$42,000.00 par value of its common capital stock in connection with the acquisition of said properties.

It appears from Exhibit "A" that under date of January 22, 1929, the owners of Elk Grove Water Company granted to W. B. Foshay Company an exclusive right and option to purchase said properties for

\$42,000.00. Paragraph five of the option reads, in part, as follows:-

"It is understood that you (W.B.Foshay Company) shall be under no obligation whatsoever to purchase said property in the event the Public Service Commission shall not allow securities in the amount of at least Forty-two Thousand (\$42,000.00) Dollars and the cost of the examinations, to be issued in consideration for the transfer of said properties."

From Exhibit "B", it appears that W. B. Foshay Co., successor to W. B. Foshay Company, has agreed to sell to Public Utilities California Corporation "all of the properties, except cash and bills and accounts receivable, of said Elk Grove Water Company, free and clear of all liens and encumbrances, except current taxes*****for and in consideration of 420 shares of fully paid common stock" of Public Utilities California Corporation. The Public Utilities California Corporation agrees to join in an application for permission to acquire said properties and to issue its capital stock in payment therefor. In the event the Commission shall approve the acquisition of the properties and shall authorize the issuance of a lesser number of shares of capital stock than the number herein specified, W. B. Foshay Co. may, at its option, accept said lesser number of shares as full consideration for said properties. There is nothing, however, in the record to indicate that either the Public Utilities California Corporation or W.B.Foshay Co. would pay \$42,000.00 for the properties of the Elk Grove Water Company in the event the Commission does not authorize the issue of that amount of stock.

At the hearing had on this application, The Loveland Engineers, Inc. submitted testimony which shows that in their opinion the reproduction cost new of the properties of the Elk Grove Water Company, as of January 31, 1929, was \$44,412.00, the reproduction cost new less depreciation \$33,688.00, the estimated original cost new, including present value of land, \$37,162.00, and the estimated original cost new less depreciation \$29,559.00. All of these figures include

an allowance of \$4,000.00 for going concern value. Mr. W. M. McKay, an assistant engineer for the Commission, testified that in his opinion the historical cost new of the properties was \$30,853.00 and the reproduction cost new less depreciation \$23,197.00. His estimates include no allowance for going concern value.

In Exhibit one applicants estimate the net income of the Elk Grove Water Company properties for the period ending December 31, 1930 at \$2,047.87. In arriving at this net income, an allowance of \$147.35 was made for depreciation.

The evidence submitted does not warrant the Commission to authorize the Public Utilities California Corporation to issue \$42,000. par value of its common capital stock in connection with the purchase of the Elk Grove Water Company properties. As stated, there is nothing in the record to indicate that the transaction will be consummated in the event the Commission authorizes a lesser amount of stock. Without any such assurance, it seems to us that any order authorizing the transfer of the properties and fixing the amount of stock which Public Utilities California Corporation might issue in payment therefor is an idle act.

Upon the receipt of an application by the legal or equitable owner of public utility properties for permission to transfer the same and to re-finance said properties by the purchaser, the Commission usually determines the cost or value of said properties. But, to determine such cost or value upon request of applicants, one of whom holds a mere option to purchase, as in this instance, would, in effect, be rendering a declaratory opinion as to the cost or value of the properties which the holder of the option can use as a basis for new negotiations. Such a burden should not properly be imposed upon the Commission. This being the case, we believe there is no justification for the Commission to devote any further time to the consid-

eration of the evidence submitted and that this application should be dismissed without prejudice.

ORDER

Ira Jones and Selma K. Jones having asked permission to sell and transfer their public utility water properties operated under the name of the Elk Grove Water Company to Public Utilities California Corporation and said corporation having asked authority to acquire and operate said properties and issue \$42,000.00 par value of its common capital stock in payment for said properties, a public hearing having been held before Examiner Fankhauser, and the Commission having considered the evidence and record in this proceeding and being of the opinion that, for the reason recited in the foregoing opinion, this application should be dismissed without prejudice, therefore,

IT IS HEREBY ORDERED that this application be, and the same is hereby, dismissed without prejudice.

IT IS HEREBY FURTHER ORDERED that this order shall become effective ten days after the date hereof.

DATED at San Francisco, California, this 4th day of October, 1929.

Thos D. Lott

W. C. Seaman

Frank J. Smith

Leon A. Whidell

W. J. Carr

Commissioners.