

Decision No. 22188**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 BENBOW POWER COMPANY)
 for an order authorizing the issuance) Application No. 16252
 of stock and bonds.)

Corbet & Selby, by Burke Corbet,
 for applicant.

BY THE COMMISSION:

O P I N I O N

In this proceeding as amended at the hearing, Benbow Power Company asks the Railroad Commission to make an order authorizing it to execute a mortgage and to issue \$130,000.00 of fifteen year six percent first mortgage bonds and \$50,000.00 of common stock for the purpose of paying indebtedness and of financing the cost of acquiring and constructing additional properties, as hereinafter set forth.

The records of the Commission show that Benbow Power Company is a corporation organized on or about January 19, 1928, under the laws of the State of California, by the Benbow Company, a corporation engaged in a hotel, resort and other enterprises at or near Benbow, Humboldt County. Heretofore the power company has received from the Commission certificates of public convenience and necessity permitting it to exercise franchise rights and to operate an electric system in portions of Humboldt and Mendocino Counties, including Redway, Garberville and Benbow and adjacent districts along the Redwood Highway, and to operate a water system for the purpose of supplying water for domestic and other purposes within

the confines of the property of the Benbow Company (Decision No. 19871, dated June 11, 1928, Vol. 31, Opinions and Orders of the Railroad Commission of California, Page 849).

Following the Commission's order, it appears that applicant filed with the Commission its schedules of rates covering electric service and since has been operating as a utility in the distribution of electricity in and about Garberville, Benbow and adjacent territory. It has not as yet filed its schedules of rates for water deliveries and while it has metered its services and kept records of water consumption, it has not made collections from water users. The record shows, however, that it intends in the future to file water rates with the Commission and to operate as a water utility.

In its amended Exhibit "D", the company has submitted a general description of its properties and has reported its investment in its physical properties, as of November 30, 1929, at \$83,101.92, including \$520.00 for materials and supplies. It appears, however, from the testimony herein, that the figure is not complete, certain amounts for labor, etc., having been paid by the Benbow Company and not as yet charged to applicant. In addition, appraisals of the properties made by the Commission's Engineering Department have been submitted in this proceeding, showing valuations, as of December 31, 1929, estimated as follows:

Historical reproduction cost.....	\$96,272.00
Historical reproduction cost less depreciation.....	93,403.00
Reproduction cost new.....	97,755.00
Reproduction cost new less depreciation.	94,862.00

The application shows that applicant's generating facilities consist of a 135 h.p. Diesel engine. It appears that this plant is inadequate to meet its needs and that it has been decided to construct a dam on lands owned by the company in the South Fork

of the Eel River and to install a 250 kilowatt generating plant. The cost of the dam is estimated at \$33,316.00 and of the hydro-electric plant at \$10,775.00.

The construction of the dam will submerge certain lands belonging to the Benbow Company. In addition it is reported necessary for applicant to control water rights along Fish Creek which are owned by Benbow Company. These water rights and riparian and impounding areas on lands owned by Benbow Company on the South Fork of Eel River, the East Branch of the South Fork of Eel River and on Fish Creek, together with all rights and privileges of whatever nature necessary for applicant in the development, manufacture, sale and distribution of power and water, including the right of ingress and egress over, on, to and through the property of Benbow Company, and all rights, privileges and franchises for the construction and maintenance of pole lines, buildings and structures of every kind and character, will, it is proposed, be transferred by the Benbow Company to applicant for the term of its corporate existence, for the sum of \$50,000.00, payable in common capital stock, such rights and privileges to revert to the Benbow Company upon the failure by applicant to use, or the discontinuance of the use of, such rights for the purposes designated.

Applicant to date has issued no stock, other than three shares to qualify its directors, nor bonds nor notes, having financed its construction and acquisition costs almost entirely with moneys advanced by the Benbow Company and amounts due on account of the purchase of land, its application in this connection showing, as of November 30, 1929, the sum of \$65,839.64 due the Benbow Company and \$15,930.00 due on the purchase price of eighty acres of land known as the Kemper property and one hundred sixty acres known as the Lumberman's Timber Company property.

In order to finance its properties more permanently, applicant proposes to issue \$50,000.00 of its common stock to Benbow Company in payment for the rights and permits referred to herein, to issue at not less than 95 percent of face value, \$80,000.00 of fifteen year six percent bonds to pay in part the indebtedness due Benbow Company and the balances due on the real estate purchases, and to issue at not less than 90, \$50,000.00 of bonds to finance the cost of constructing the proposed dam and hydro-electric plant.

For the eleven months ending November 30, 1929, applicant reports operating revenues and expenses as follows:

Electric.....	\$ 9,706.38
Water.....	3,680.00
Total.....	<u>13,386.38</u>
Operating expenses.....	3,149.84
Electric.....	\$2,874.72
Water.....	<u>275.12</u>
Net operating revenue.....	10,236.54
Less-Taxes.....	171.26
Interest.....	<u>517.45</u>
Total deductions.....	<u>688.71</u>
Net income.....	<u>\$ 9,547.83</u>

As stated the company has never filed water rates and therefore there is considerable doubt whether the \$3,680.00 reported as operating revenue from the sale of water can be collected. Moreover, it appears that applicant has not been charged for services and facilities furnished by Benbow Company.

Mr. J. E. McCaffrey, an Assistant Engineer for the Commission, submitted an estimate showing what the total operating revenues and expenses of the Benbow Power Company should have been had it operated its properties during 1929 independent of Benbow Company. For 1929 he reports an estimated net operating revenue of \$7,100.00. In arriving at this net operating revenue, he proceeds on the assumption that the company had filed rates covering the sale of water and had received from the said sale \$6,500.00. As stated

the company to date has filed no water rates.

Benbow Company caused applicant to be organized. It did so for the purpose of having some one furnish public utility service (electricity and water) to itself and to those to whom it might sell property, as well as to others in the territory throughout which it operates. Benbow Company will own all of the outstanding stock of Benbow Power Company. While the construction of the proposed dam is being undertaken because of a desire to build and operate a hydro-electric generating plant, it will create a reservoir that will beautify and should popularize the property of the Benbow Company. The persons in charge of the construction, management and operation of applicant's plants have been employees of Benbow Company. There is nothing in the record to show that there will be any severance of ~~the intercorporate~~ relations between applicant and Benbow Company. A severance of this relation might, however, occur at some future time with the result that applicant's operating expenses would be increased and its net income decreased. In view of this situation, and for other reasons, it occurs to us that the Benbow Company should guarantee the payment of the principal of, and the interest upon, the bonds which may be issued under the mortgage or deed of trust which applicant will be authorized to execute to secure the payment of the bonds, the issue of which is authorized by the following order. The guarantee should be substantially as follows:

The guarantor (Benbow Company) in consideration of the issuance to said guarantor, at or before the execution of these presents, of five hundred (500) fully paid shares of the common stock of Benbow Power Company, agrees to guarantee, and does hereby guarantee, for itself, its successors and assigns, the prompt and punctual payment of the principal of, and the interest upon, all the bonds to be issued hereunder and secured hereby.

This guarantee should appear on the back of each bond, as well as in the mortgage or deed of trust executed to secure the payment

of the bonds.

Applicant has filed with the Commission a copy of a proposed mortgage or deed of trust to secure the payment of its bonds. This instrument as now drawn provides for the issue of 6-1/2 percent fifteen year serial bonds. B. Benbow testified that applicant would issue six percent fifteen year bonds. Under the proposed mortgage, the company reserves the right to redeem the bonds prior to maturity. It will be necessary for the company to file with the Commission a revised copy of its proposed mortgage or deed of trust. The order herein will provide that no bonds may be issued until the company has filed with the Commission a copy of its revised mortgage or deed of trust, nor until the Commission by supplemental order has authorized the execution of such instrument. Furthermore, we believe that before any proceeds from the issue of the bonds are used to finance the cost of the dam and power house, the company should file detailed statements setting forth the estimated cost of such dam and power house, and receive from the Commission a supplemental order permitting the use of bond proceeds for that purpose.

ORDER

Benbow Power Company having applied to the Railroad Commission for permission to execute a mortgage or deed of trust and to issue \$50,000.00 of common stock and \$130,000.00 of bonds, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the issue of the stock and bonds is reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expense or to income, therefore,

IT IS HEREBY ORDERED that Benbow Power Company be, and it hereby is, authorized to issue, on or before October 1, 1930, not exceeding \$50,000.00 of its common stock to the Benbow Company in payment for the rights and privileges referred to in the foregoing opinion, and to issue and sell, on or before October 1, 1930, at not less than 95 percent of face value plus accrued interest, \$80,000.00 of its fifteen year six percent first mortgage bonds to pay in part amounts due the Benbow Company and to pay the balance due on account of the purchase of the real property referred to in the foregoing opinion.

IT IS HEREBY FURTHER ORDERED that Benbow Power Company be, and it hereby is, authorized to issue and sell, on or before October 1, 1930, at not less than 95 percent of its face value plus accrued interest, \$50,000.00 of its fifteen year six percent first mortgage bonds for the purpose of financing the cost of its proposed dam and hydro-electric generating plant, provided that no proceeds be expended for such purpose until the company has filed with the Commission detailed statements showing its proposed expenditures, and has received from the Commission a supplemental order authorizing the use of said proceeds.

The authority herein granted is subject to the following conditions:

(1) Applicant shall keep such record of the issue and delivery of the stock and bonds 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, insofar as applicable,

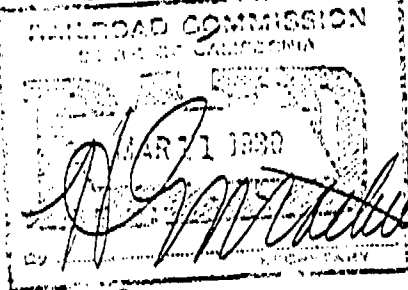
is made a part of this order.

(2) The authority herein granted to issue stock will become effective upon the date hereof.

The authority herein granted to issue bonds will become effective only when the company has filed with the Commission a copy of its proposed mortgage or deed of trust securing the payment of its bonds and has received from the Commission a supplemental order approving the execution of said mortgage or deed of trust and when the company has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is One Hundred and Thirty (\$130.00) Dollars, and when the company has issued the stock herein authorized.

DATED at San Francisco, California, this 10th day of March, 1930.

Fee \$130 ⁰⁰/₁₀₀



Fee # 27840

Cl. Savery

Leon A. Whelan

Sam B. Curtis

M. J. Lee

Commissioners.