LBM

Decision No. 24156

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of THE CALIFORNIA OREGON POWER COMPANY for an order of the Railroad Commission of the State of California authorizing:

(a) the execution of a refunding mortgage covering all of its presently owned and hereafter acquired properties;
(b) the issue and sale of $4,000,000. refunding mortgage gold bonds, 5% series due 1961, or pledge thereof to secure one-year promissory notes;
(c) the issue and sale of $3,000,000. five and one-half percent gold debentures;
(d) the issue and sale of $500,000. par value six percent preferred stock, Series of 1927;
(e) the sale of $500,000. par value six percent preferred stock, Series of 1927, at a price differing from that provided in Decision No. 23954;
(f) the issue and sale of 36,240 shares of common stock without par value.

Application No.17692

Brobeck, Phleger and Harrison, by Herman H. Phleger and Jas. S. Moore, Jr., for applicant.

BY THE COMMISSION:

OPINION

In this proceeding the Railroad Commission is asked to enter its order authorizing The California Oregon Power Company to perform the following acts:

1. Execute a trust indenture for the purpose of securing the payment of refunding mortgage bonds and a trust agreement for the purpose of securing the payment of one year notes.

2. Issue and sell $3,500,000.00 of one year four and one half percent notes and to secure the payment of such notes by the issue and deposit of $4,000,000.00 of its refunding mortgage gold bonds, five percent, series due 1961.

3. Issue and sell $3,000,000.00 of five and one half percent gold debentures due October 1, 1942.

4. Issue and sell $1,000,000.00 of six percent preferred stock, Series of 1927.

5. Issue 59,411 shares of common stock without par value in exchange for 59,411 shares of common stock with a par value of $100.00 per share now outstanding.

6. Issue and sell 36,240 shares of common stock without par value.

As of July 31, 1931 applicant in its Exhibit "A" reports its assets and liabilities as follows:

ASSETS:	
Plant, property, rights and franchises	$31,913,783.76
Unamortized debt discount and expense	986,758.03
Investments	3,535.81
Sinking funds	37,725.28
Insurance unexpired	7,170.67
Cash	353,936.34
Accounts and notes receivable-Net	701,261.00
Materials and supplies	535,040.37
Prepaid accounts	7,370.00
T O T A L	$34,546,581.26
LIABILITIES:	
Preferred capital stock, 7% cumulative	$ 2,883,000.00
Preferred capital stock, 6% cumulative	5,500,000.00
Common capital stock	5,941,100.00
First and refunding mortgage sinking fund gold bonds:	
Series "B" 6% Due 1942	4,302,300.00
Series "C" 5-1/2% Due 1955	2,468,000.00
General and refunding mortgage gold bonds:	
Series "A" 5½%, Due 1946	3,000,000.00
Debenture bonds 5½% Due October 1,1942	4,000,000.00
Due to affiliated companies	2,837,777.64
Accounts payable	258,439.51
Accrued for interest	357,136.13
Accrued for taxes	500,303.35
Accrued for dividends	44,317.50
Customer's deposits	60,872.48
Retirement reserves	1,740,591.02
Other reserves	217,606.03
Deferred accounts in process of amortization	110,119.98
Surplus	325,017.62
T O T A L	$34,546,581.26

The company reports in its Exhibit No. 1 that it has need for $8,673,500.00 for the following purposes:

To retire $3,000,000.00 of general and refunding mortgage bonds at 104	$3,120,000.00
To pay floating debt incurred for retirement of underlying securities for additions and betterments	2,837,777.64
To pay for construction from August 1,1931 to December 31, 1931	2,399,381.00
To provide funds for necessary construction during the early part of 1932	316,341.36
T O T A L	$8,673,500.00

The company proposes to obtain the $8,673,500.00 through the issue and sale of the aforementioned stocks, notes and debentures.

Applicant has outstanding $3,000,000.00 of five and one half percent general and refunding mortgage bonds due February 1, 1946. These bonds were issued under the authority granted by Decision No. 15700 dated November 30, 1925, and sold by the company at 93 percent of their face value and accrued interest. The company proposes to redeem these bonds now at 104 and accrued interest. It is alleged that it is impossible for the company to secure funds through the issue of additional bonds under its general and refunding mortgage, and that the bankers who have been negotiating for the purchase of additional bonds, insist that the general and refunding bonds be redeemed and the deed of trust securing the payment of such bonds released of record. Coincident with the releasing of this deed of trust there will be cancelled $2,187,500.00 of the company's Series "D" five and one half percent, due February 1, 1946, of first and refunding mortgage sinking fund bonds which are deposited with the trustee under the company's general and refunding mortgage.

The financial program of the company contemplates that the trustee under its new trust indenture will forthwith certify $4,000,000. of refunding mortgage gold five percent bonds, due 1961, and that such bonds will be deposited as collatoral security for the payment of

$3,500,000.00 of four and one half percent one year notes. The notes will be sold for 98-1/2 percent of their face value and accrued interest. It is believed that during the year the $4,000,000.00 of bonds can be sold at a better price than can be obtained at present, and that if sold, the proceeds will be used to pay the one year notes. Applicant does not at this time ask permission to sell the bonds.

The trust indenture securing the payment of the $4,000,000.00 of refunding mortgage gold bonds provides that the company may, from time to time, issue an additional $3,000,000.00 of bonds without incurring any additional capital expenditures, provided the company's net earnings for the twelve months ending not more than ninety(90) days prior to the date of such issue, amount to at least twice the annual interest charges on the bonds, including interest charges on the bonds proposed to be issued.

It is of record that the $3,000,000.00 of general and refunding bonds are owned by the Standard Gas and Electric Company. This company has expressed a willingness to accept $3,000,000.00 of applicant's five and one half percent debentures at 97 percent of their face value and accrued interest, and to surrender the general and refunding bonds at 104 and accrued interest. To carry out this refunding operation the company will have to provide $3,120,000.00 to redeem its general and refunding bonds and will secure $2,910,000.00 from the issue of its debentures. An additional $210,000.00 will have to be obtained from other sources.

By Decision No. 23954, dated August 17, 1931, in Application No. 17554, the Commission authorized The California Oregon Power Company to issue and sell 10,000 shares($1,000,000.00 par value) of its six percent, Series of 1927, preferred stock at not less than $99. per share and expend not more than $5.00 per share to pay expenses incident to the sale of the stock. The company asks the Commission to modify its order so as to permit it to sell at $94.00 net per share, 5,000 shares of such stock. In addition it asks that the Commission authorize the sale of an additional 5,000 shares of the six percent series of 1927 preferred stock at a price of not less than $94,00 net per share. It is of record that the actual cost of selling the six percent preferred stock is approximately $5.00. The 10,000 shares of preferred stock would be sold to the Standard Gas and Electric Company.

The company's stockholders have authorized an amendment of its Articles of Incorporation, under the terms of which its authorized common stock will be changed from 150,000 shares of the par value of $100.00 each, to 150,000 shares of no par value. It now has an authorized stock issue of 300,000 shares divided at this time into 150,000 shares of preferred stock and 150,000 shares of common stock, all of the shares having a par value of $100.00. As of July 31, 1931, 83,830 shares of the company's preferred stock and 59,411 shares of the company's common stock were outstanding, or a total of 143,241 shares. By Decision No. 23954 dated August 17, 1931, the Commission authorized the company to issue 10,000 shares of additional preferred stock at a net price of $94.00 per share. In this proceeding the company asks to issue, as stated, 5,000 shares more of the preferred stock at the same price. If all this stock were issued the company would have outstanding 98,830 shares of preferred stock, or $9,883,000.00 par value.

Applicant now asks permission to issue 59,411 shares of common stock without par value, in exchange for the outstanding 59,411 shares of common stock having a par value of $100. each. In addition, it would issue 36,240 shares of common stock having no par value, at $25.00 per share, or for a total consideration of $906,000.

If the application is granted and the stocks issued, the company would have outstanding 98,830 shares of preferred stock having a par value of $9,883,000.00 and 95,651 shares of common stock, representing an investment of $6,847,100.00. The latter figure is made up of the par value of the common stock now outstanding, plus the consideration which the company would receive for 36,240 shares of its no par common stock.

All of the stock which applicant has outstanding has been issued under authority granted by the Railroad Commission. At the time the stock was issued each share, both common and preferred, had a par value of $100.00, and each share, both common and preferred, entitles the holder thereof to one vote. This situation will prevail under the proposed amendment to applicant's Articles of Incorporation. In other words, no distinction is now made, or, so far as the Articles of Incorporation are concerned, will be made, between the classes of stock as to voting power. From a practical standpoint the parity of voting rights is destroyed by applicant's proposal to issue common stock at $25.00 per share.

Of applicant's outstanding stock, $2,220,000.00 of preferred and $4,440,000.00 of common, was initially issued at par under the authority granted by Decision No. 8723 dated March 10,1921. An additional $1,100.00 par value of common stock was issued to qualify directors. Since then the company has issued at par $1,500,000.00 of common stock and $6,163,000.00 of preferred at prices ranging from $90.00 to $101.00 per share. At this time the control of the company rests with the holders of the preferred stock. It does so because of the larger number of shares of preferred stock issued and sold. The holders of the preferred stock have invested more in the properties of the company than the holders of the common stock. It is proper, therefore, that the former should control the company.

Applicant now requests that it be permitted to issue 36,240 shares of common stock at $25.00 per share. By this issue the relative position of the holders of preferred stock, so far as the control of the company is concerned, would be seriously affected. It is urged that the common stock is not worth more than $25.00 per share because of the uncertainty of a return thereon, for quite a long period of time to come. The principal factor in the uncertainty is the lack of precipitation during the current year. This year, because of the low precipitation, the company's operating expenses, due to the purchase of electricity and the generation of electricity by steam plants, have materially increased. Perhaps the common stock is not worth more than $25.00 per share. But the record in this proceeding does not establish any such value. Even if it did, we question the propriety of authorizing the issue of the stock on that basis unless the present relative voting status between the holders of the common and the preferred stock is maintained. Authority to issue the common stock will be denied without prejudice.

The company has filed as its Exhibit No. 5 a copy of its proposed trust indenture which it intends to execute to the American Trust Company as Trustee for the purpose of securing the payment on its refunding bonds. It has also filed as its Exhibit No. 4 a copy of the trust agreement under which it proposes to issue its one year four and one half percent notes secured by the deposit of $4,000,000. of its refunding mortgage bonds. We have not completed our examination of these instruments. Moreover, counsel for applicant stated that they might wish to make some changes therein. If the indenture and agreement are found to be in satisfactory form we will enter a supplemental order authorizing their execution.

We do not believe that any proceeds realized from the issue and sale of the securities authorized in the following order should be used to pay any premium on the general and refunding bonds, nor will we regard the unamortized discount and expense applicable to such bonds as discount and expense on the notes or debentures authorized to be issued by said order.

O R D E R

The California Oregon Power Company having applied to the Railroad Commission for permission to issue bonds, notes, debentures and stocks, as indicated in the foregoing opinion, a public hearing having been held before Examiner Fankhauser and the Commission having considered the record in this proceeding, and being of the opinion that the money, property or labor to be procured or paid for by the issue of the bonds, notes, debentures and preferred stock herein authorized is reasonably required by applicant for the purposes herein stated, that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income, and that this application insofar as it involves the issue of common stock without par value, should be denied without prejudice for the reasons set forth in the foregoing opinion, therefore,

IT IS HEREBY ORDERED as follows:

1. The California Oregon Power Company may issue, after the Commission has authorized it to execute a trust indenture to secure the payment of its refunding mortgage bonds, $4,000,000.00 face value of said refunding mortgage bonds, five percent series due 1961, and deposit the same as collateral security for the payment of $3,500,000.00 of one year notes, the issue of which is herein authorized.

2. The California Oregon Power Company may issue and sell, after the effective date hereof and on or before December 31, 1931, at not less than 98-1/2 percent of their face value and accrued interest, $3,500,000.00 of four and one half percent one year notes.

3. The California Oregon Power Company may issue and sell, after the effective date hereof and on or before December 31, 1931, at not less than 97 percent of their face value and accrued interest, $3,000,000.00 of five and one half percent gold debentures, due October 1, 1942.

4. The California Oregon Power Company, may issue and sell, after the effective date hereof and on or before June 30, 1932 at not less than $94.00 net per share, 5,000 shares of its six percent preferred stock, series of 1927, and may issue and sell, at not less than $94.00 per share, 5,000 shares of preferred stock authorized to be issued by Decision No. 23954, dated August 17, 1931.

5. The California Oregon Power Company shall use the proceeds realized through the sale of the aforementioned notes, debentures and stock to pay $3,000,000. of general and refunding mortgage bonds, to pay floating indebtedness incurred to retire underlying securities and to pay for additions and betterments and to pay the cost of constructing additions and betterments to its plants and properties from August 1, 1931 to December 31, 1931, provided that only such expenditures may be paid through the use of the

aforesaid proceeds as are properly chargeable to fixed capital accounts under the uniform system of accounts prescribed by this Commission or other governmental authority having jurisdiction over applicant's operations; and provided further, that none of said proceeds may be used to pay the premium on the said general and refunding mortgage bonds, nor may the unamortized debt discount and expense applicable to said bonds be added to the discount and expense on the aforesaid notes and debentures.

IT IS HEREBY FURTHER ORDERED, that the request of The California Oregon Power Company for permission to issue 59,411 shares of common stock without par value in exchange for 59,411 shares of common stock with a par value of $100.00 each, and now outstanding, and its request for permission to issue and sell, at $25.00 per share, 36,240 shares of common stock without par value, be, and the same is hereby, denied without prejudice.

IT IS HEREBY FURTHER ORDERED, that The California Oregon Power Company shall keep such record of the issue, sale and delivery of the bonds, notes, debentures and preferred 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, insofar as applicable, is made a part of this order.

IT IS HEREBY FURTHER ORDERED, that the authority herein granted to issue notes and debentures will become effective when The California Oregon Power Company has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is Two Thousand Two Hundred and Fifty($2,250.00) Dollars, and when this Commission has authorized it to execute a trust agreement under which said notes may be issued.

IT IS HEREBY FURTHER ORDERED, that except as otherwise herein provided, the authority herein granted will become effective twenty (20) days after the date hereof.

DATED at San Francisco, California, this 26th day of October, 1931.

Leon O. Whitsell
W. J. Carr
M. B. Harris
Fred G. Stevenot

Commissioners.

Fee paid on 2nd Sup. Order. app. 17692
Dec 24,781, $25.00 June 3. 1932.
H. G. Mathewson, Sec.