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Decision No. 101287.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE
STATE OF CALIFORNIA

In the Matter of the Application of)
PACIFIC GAS AND ELECTRIC COMPANY,)
a corporation, for an order of the)
Railroad Commission of the State of)
California authorizing applicant to)
issue its common capital stock in the)
manner, to the extent and for the)
purposes specified herein.)

Application No. 7464

William B. Bosley and C.P. Cutten, for applicant;
F.S. Brittain for California Farm Bureau Federation,
protestant.

ROWELL, Commissioner.

O P I N I O N

PACIFIC GAS AND ELECTRIC COMPANY asks permission to issue 6799.76 shares (\$679,976.00 par value) of its common stock to reimburse its treasury on account of surplus earnings invested in working capital, and after such reimbursement to distribute the stock as a stock dividend to its common stockholders.

Applicant reports that from January 1, 1917 to November 30, 1921, its surplus has increased by the sum of \$1,857,327.72. In Exhibit "C" applicant reports unappropriated surplus on November 30, 1921 of \$6,818,527.19 as compared with \$4,152,801.07 on January 1, 1917, the increase amounting to \$2,665,726.12. From the \$2,665,726.12 applicant deducts \$808,398.40, which amount was transferred to a special depreciation reserve, leaving a net increase of \$1,857,327.72.

In Exhibit "C" applicant reports the additions to, and

deductions from, its corporate surplus account as follows:

Balance - January 1, 1917,					\$4,152,801.07
<u>Add</u> Net Income					
1917,	\$3,181,079.92				
1918,	3,722,585.68				
1919,	4,340,352.83				
1920,	4,919,958.58				
1921 to November 30,	<u>5,423,669.17</u>				21,587,645.18
<u>Add</u> Miscellaneous Adjustments					25,740,447.25
1917 -Credit,	\$ 32,635.36				
1918	154,408.11				
1919,	26,812.47				
1920,	208,326.89				
1921 to November 30,	<u>279,671.46</u>				636,583.57
					<u>26,377,030.82</u>
<u>Deduct:</u> Reserve for amounts charged to consumers in 1917 in excess of rates allowed by City Ordinance,					283,390.16
					<u>26,093,640.66</u>
<u>Deduct:</u> Dividends paid:					
: <u>Preferred</u> :	<u>Common</u> :		<u>Total</u> :		
\$	\$		\$		
1917,	1,471,104.67	1,281,372.27	2,752,476.94		
1918,	1,490,463.23	None	1,490,463.23		
1919,	1,528,961.46	1,708,094.60	3,237,056.06		
1920,	1,777,933.03	1,700,845.85	3,478,778.88		
1921 to Nov-30	<u>2,132,409.79</u>	<u>1,275,660.30</u>	<u>3,408,070.09</u>		
	8,400,872.18	5,965,973.02	14,366,845.20		14,366,845.20
					<u>\$11,726,795.46</u>
<u>Deduct:</u> Special depreciation reserve set up in conformity with Railroad Commission Decision No. 3484:					
1917,	\$991,601.60				
1918,	1,000,000.00				
1919,	1,000,000.00				
1920,	1,000,000.00				
1921 to November 30th,	<u>916,666.67</u>				4,908,268.27
					<u>\$6,818,527.19</u>

The term "net income" as used above represents the company's operating and non-operating income less operating expenses, customary depreciation, taxes, interest and other fixed charges.

The company has regularly paid 6 per cent. dividends on its preferred stock. The increase in the amount of dividends paid on preferred stock, is caused by more stock being outstanding. On its common stock, applicant paid a cash dividend of 5 per cent. during the

first three quarters of 1917; no dividends during 1918, and a cash dividend of 5 per cent. during each of the years 1919, 1920 and 1921. An analysis of the company's surplus account shows that it could under the law have declared a dividend on the common stock during 1918.

As of November 30, 1921, applicant's balance sheet shows current assets of \$12,321,654.50. On December 31, 1916, its current assets amounted to \$8,147,751.46. The increase in the current assets amounts to \$4,173,903.04. Applicant's current liabilities on November 30, 1921, amounted to \$7,364,877.54; on December 31, 1916, to \$4,012,098.10, the increase being \$3,352,779.44. The increase in applicant's current assets, during the period under consideration, was \$821,123.60 more than the increase in current liabilities.

It appears that applicant's earnings from December 31, 1916 to November 30, 1921, have been sufficient to enable it to declare a cash dividend on its common stock of \$679,976.00 in addition to the dividend paid on such stock. Instead of paying an additional cash dividend, applicant has concluded to pay in common stock at par an additional dividend of 2 per cent. on its common stock. If permitted by the Commission, applicant will issue \$679,976.00 of common stock at par to reimburse its treasury because of surplus earnings invested in working capital, and then distribute the stock to its common stockholders.

F.S. Brittain, representing the California Farm Bureau Federation, asks the Commission not to grant applicant's request. He urges, among other things, that applicant's showing has been inadequate and not in accordance with the terms of the Public Utilities Act and that the granting of the application involves the capitalization of stock discount. He takes the further position that if the application is granted, it should be granted subject to the following conditions:

- (a).-- That the company be required to stipulate that the 6 per cent. surcharge will be discontinued on all service after January 1, 1922;
- (b).-- That the company as of January 1, 1922 charge its surplus account and credit its special depreciation account with \$1,200,000.00 required to be added to depreciation in 1922 under the Decision in Application No. 2056
- (c).-- That the company be required to stipulate that it will not make a demand for allowance for special depreciation in the pending valuation and rate proceeding and that it will not at any time urge in any proceeding that this special privilege granted indicates either a general approval of the Commission of stock dividends or the propriety of a return of 7 per cent. on common stock.

The company can under the law declare dividends only when it has a surplus, and no action taken by this Commission can in any way be interpreted as a finding that applicant should pay 7 per cent. dividend on its common stock, nor that part of the dividend on the common stock, if any is declared by applicant's Board of Directors, should be paid in cash and part in stock. A utility may desire to establish its stock on a certain dividend payment basis, but whether this can be done, depends entirely on the utility's surplus earnings. This Commission has repeatedly announced that it does not in any way guarantee the payment of dividends or interest.

By virtue of an order by this Commission, Decision No. 3484, dated July 1, 1916, Application No. 2056, applicant is required to set aside out of income, and expend in its business, the sum of \$7,000,000.00 within a period of seven years from January 1, 1916, which sum shall remain uncapitalized. Under the Commission's decision, the company has a right to apply against the \$7,000,000, payments made into sinking funds during the years mentioned in the Commission's decision. Under this decision, \$1,200,000.00 must be set aside in 1922. F.S. Brittain, in effect, asks the Commission to amend its Decision No. 3484, so as to require the company to appropriate the \$1,200,000.00 as of January 1, 1922. It appears that the company has been complying with the terms of the Commission's

decision, and I see no reason for modifying it at this time so as to require an appropriation of the \$1,200,000.00 at the beginning of 1922 rather than during the current year.

It is for this Commission to determine what amount shall be allowed in rates to cover depreciation. Bearing in mind the Commission's decision in Application No. 2056 and the fact that the Commission directed applicant to appropriate the \$7,000,000 (the company not having asked for an order of such character), I see no need for insisting that the company file a stipulation agreeing that it will not call upon the Commission to make an allowance for a special depreciation in the pending valuation and rate proceeding.

Protestant asks that the company be required to stipulate that the 6 per cent surcharge will be discontinued on all service after January 1, 1922. I think a stipulation of this character is not a proper condition in this order authorizing the issue of stock. The removal of the surcharge involves the rates of the company and should be brought before the Commission in a proper rate proceeding.

Coming now to a consideration of the grounds on which F.S. Brittain urges the denial of this application.

I do not believe that this application results in either the amortization or capitalization of stock discount. It involves the issue of common stock at par. If it is granted, the company will retain in its business \$100.00 for every share of stock issued. The surplus which applicant intends to divert from its cash funds available for dividends to its capital stock account was obtained from applicant's business as a whole. It is common knowledge that applicant is engaged in several kinds of public utility service, namely--- electric, gas, street railway, water and steam heating.

Applicant's surplus has resulted from the conduct of its various business activities. The rates charged have been fixed according to the law. The allegation is made that because they produce a surplus, they are too high and therefore should be reduced. No reference whatever is made by protestant to the relation between the reasonable value of applicant's properties and the surplus earnings.

Section 52 of the Public Utilities Act reads in part as follows:-

"(b) A public utility may issue stocks and stock certificates, and bonds, notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, for the following purposes and no others, namely, for the acquisition of property, or for the construction, completion, extension or improvement of its facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations, or for the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the public utility not secured by or obtained from the issue of stocks or stock certificates, or bonds, notes or other evidences of indebtedness of such public utility, for any of the aforesaid purposes except maintenance of service and replacements, in cases where the applicant shall have kept its accounts and vouchers for such expenditures in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which such expenditure was made."

I am of the opinion that the Commission has under Section 52 of the Public Utilities Act no power to authorize the issue of stock for the purpose of paying a stock dividend. It occurs to me that the Commission is authorized to permit a utility to issue stock for the reimbursement of its treasury.

I believe that the act clearly contemplates that a utility which seeks permission to issue stock to reimburse itself on account of moneys expended must make two affirmative showings, first- that the money so expended was not obtained from the issue of stock, bonds, notes or other evidences of indebtedness; and second- that the money was actually expended for one or more of the purposes mentioned in Section 52 of the Public Utility Act and in accordance with that section. It occurs to me that considering the record in this proceeding that applicant has made an adequate showing to warrant the Commission

to make an order authorizing the issue of stock covered in this application for the purpose of reimbursing applicant's treasury.

The record clearly indicates that applicant's unappropriated surplus is much in excess of \$679,976.00, the amount which it asks permission to capitalize through the issue of stock and that at least \$679,976.00 of applicant's surplus has been used in the conduct of its business and in the improvement of its service. It is a self-evident fact that a utility engaged in the character of business such as applicant is, and which business is not conducted on a prepayment basis, has need for working capital and can secure such working capital in the first instance only through the issue of stock, bonds, notes or other evidences of indebtedness. Within proper limits I regard it to the benefit of the consumers, if a utility permanently invests surplus earnings in its business. I believe that this proceeding is such a case.

I herewith submit the following form of Order:

O R D E R

PACIFIC GAS AND ELECTRIC COMPANY having applied to the Railroad Commission for permission to issue \$679,976.00 par value of its common stock, a public hearing having been held and the Commission being of the opinion that the money, property or labor to be procured or paid for by applicant through the issue of such stock is reasonably required by applicant;

IT IS HEREBY ORDERED, that PACIFIC GAS AND ELECTRIC COMPANY be, and it is hereby, authorized to issue \$679,976.00 par value of its common capital stock for the purpose of reimbursing its treasury on account of surplus earnings invested in working capital.

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

- 1.--Pacific Gas and Electric Company shall keep such record of the issue, sale and delivery of the 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 in so far as applicable is made a part of this Order.
- 2.--The authority herein granted will apply only to such stock as may be issued, sold and delivered on or before December 31, 1922.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 27th day of February, 1922.

R. B. Brundage
H. J. Loveland
Waring Martin
Chester H. Bevell
J. J. Anderson
Commissioners.