

Decision No. 1035

ORIGINAL

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of)
 Pacific Light and Power Corporation)
 for an order authorizing the issue)
 of bonds.)

Application No. 721

S. M. Haskins for applicant.

EDGERTON, Commissioner.

O P I N I O N

This is an application by Pacific Light and Power Corporation for an order authorizing the issue of \$1,730,000 face value of forty-year five per cent gold bonds.

The purposes for which the proceeds from the sale of these bonds are to be used are stated in the application as follows:

"To reimburse its treasury for moneys expended to refund 497 underlying bonds of Pacific Light and Power Corporation, of the face value of \$497,000.00.

"To sell 1233 of said bonds to reimburse its treasury for moneys actually expended from income and from other moneys in the treasury not secured by or obtained from the issue of stock or stock certificates, or bonds, within three years last past, said moneys having been expended by petitioner for the acquisition of property, and for the construction, completion, extension and improvement of its facilities, and for the improvement of its services."

It appears from the evidence introduced at the hearing that 497 underlying bonds on constituent properties of the Pacific Light and Power Corporation were purchased by applicant at a price not to exceed par, and placed in a sinking fund. The testimony is that the money used for this purchase was taken from the treasury of applicant, and we are now asked to authorize the issue of a like number of applicant's bonds which are to be sold to reimburse the

treasury of applicant for this expenditure. The request is for authority to sell these bonds at not less than 83 per cent of their face value.

The obvious effect of carrying out this plan would be to refund underlying bonds with an issue of a like number of new bonds, the discount to be taken care of in some way not disclosed.

The main purpose of a sinking fund is to gradually reduce indebtedness created by the issuance of bonds, and in order to carry out such purpose, the sinking fund should, under ordinary circumstances, be maintained from the earnings of a corporation, or at least from sources other than those which create new obligations. Manifestly, to permit the issuance of new bonds with which to acquire underlying bonds to be placed in a sinking fund, in effect, continues the indebtedness of the company and defeats the real purpose of the sinking fund. Of course, if the financial condition of the company is such that its earnings and margin of property over indebtedness warrants the continuance of its obligations undiminished, this process might not be objectionable, but unless this condition is disclosed the real purpose of creating the sinking fund should be adhered to and it should be maintained out of earnings, thus diminishing the obligations of the corporation.

In the present case, the showing made by applicant is not sufficient to warrant the conclusion that its financial condition is such as to warrant a departure from the real purpose of the sinking fund by way of refunding the same.

The second purpose stated, for which the proceeds of 1233 bonds are to be used, is for the reimbursement of the treasury for certain specified capital expenditures made within a period of three years last past.

The Public Utilities Act provides in section 52 (b) that the public utility may issue stocks, bonds, notes and other evidences of indebtedness for the purpose, among others, of the reimbursement for moneys actually expended from income or from any other moneys in the treasury of the public utility not secured or

obtained from the issue of stock or stock certificates or bonds, notes or other evidences of indebtedness of such public utility.

It is clear from the above, that it was the purpose of the Legislature to permit the reimbursement of the treasury for money spent on capital account only where such money was not obtained by the issuance of stock or evidences of indebtedness. In other words, the purpose was to prevent double capitalization.

Therefore, it should be made clear upon an application of this kind that the money expended from the treasury for which reimbursement is asked, was not obtained through the issuance of stock or evidences of indebtedness. In this case, no such showing is made, and it is impossible to determine from the reports of this Corporation on file with this Commission from what sources the money represented by the detailed expenditure was obtained. In fact, from the reports on file with this Commission, it does not appear that there was a surplus in the treasury of applicant at the times of the indicated expenditures sufficient to cover such expenditures, and the conclusion would be from this situation that the money must have been obtained from sources other than earnings. In fact, it was stated at the hearing by representatives of applicant that a floating debt was maintained and from time to time bonds were sold to pay off this floating debt. If this is the real situation, that is to say, if applicant borrowed money, giving evidences of indebtedness therefor, and with this money made the capital expenditures detailed in the application, it should now ask to refund these obligations, rather than to reimburse its treasury. This involves something more than a matter of form, because if the request is for refunding, applicant must specify the obligations to be refunded, including the interest paid, the person to whom due, etc., and the Commission in its order would provide that these identical obligations must be paid with the proceeds of the sale of bonds asked to be authorized. Under the present form of application, if granted, the Commission simply authorizes the putting of the proceeds of the sale of the bonds

into the treasury of applicant with no direction as to what should be done with such money, leaving applicant at liberty to use it as it sees fit, and it might be that applicant would permit its obligations to remain outstanding, using this money for some other purposes, when we would have the situation that the bonds would be issued against money for which there would be already outstanding other evidences of indebtedness. In other words, we would have double capitalization.

Under the circumstances, I recommend that this application be denied with permission to applicant to amend this application or file a supplemental application or to make an additional showing as to the money in its treasury from which the expenditures indicated were made, and also a showing as to its financial condition, justifying the capitalization of its sinking fund by the issuance of new bonds to take the place of underlying bonds retired into the sinking fund.

I submit herewith the following form of order:

O R D E R

Application having been made to the Railroad Commission of the State of California by Pacific Light and Power Corporation for an order authorizing the issue of \$1,730,000 face value of its forty-year five per cent gold bonds, and a public hearing having been had thereon, and it appearing to the Commission that a sufficient showing has not been made by applicant to warrant the granting of said application,

IT IS HEREBY ORDERED that this application be and the same is hereby denied with permission, however, to applicant to amend its application or file a supplemental application, or to introduce under this application additional evidence of the character indicated in the foregoing opinion.

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 25th day of October, 1913.

W. H. Gordon
Max Thelen
Edwin C. Edgerton

Commissioners.