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Decision No. 11123

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE  
STATE OF CALIFORNIA

\* \* \*

In the matter of the Application of  
WESTERN STATES GAS AND ELECTRIC COMPANY,  
a corporation, for authority to create  
a note indebtedness in the sum of  
\$20,000,000.00 and to sell and dispose  
of such note\*of the face value of  
\$5,000,000.00.

Application No. 8331.

Chickering & Gregory, by Allen L. Chickering, for  
applicant.

BENEDICT, Commissioner.

O P I N I O N

The Railroad Commission is asked to make an order  
authorizing the WESTERN STATES GAS AND ELECTRIC COMPANY --

- (1) - To execute an agreement providing for an authorized issue of  
\$20,000,000 of notes;
- (2) - To issue and sell at not less than 91-1/2 and accrued inter-  
est \$5,000,000 of the notes bearing 6 per cent. in-  
terest and maturing <sup>October</sup> ~~November~~ 1, 1937; or issue and  
sell interim certificates pending the delivery of the  
notes;
- (3) - To use the proceeds obtained from the sale of notes to pay and  
refund \$1,199,000 of 6-1/2 per cent. collateral trust  
gold notes due August 1, 1923, and \$2,668,000 of 6 per  
cent notes due February 1, 1927 and to finance new  
construction.

As of August 31, 1922, applicant reports its funded  
debt at \$15,249,000. This amount consists of \$6,050,000 of 5 per  
cent. first mortgage bonds, \$5,000,000 of 6 per cent. first and uni-  
fied mortgagebonds, \$3,000,000 of 6 per cent. notes and \$1,199,000 of

6-1/2 per cent. collateral trust gold notes. The \$6,050,000 of 5 per cent. first mortgage bonds includes \$1,724,000 of bonds pledged as collateral to secure the payment of the 6-1/2 per cent. collateral trust gold notes and \$115,500 of bonds in the company's treasury, leaving \$4,210,500 of 5 per cent. bonds in the hands of the public. The \$3,000,000 of 6 per cent. notes includes \$332,000 of notes in the company's treasury which it is authorized to issue under previous orders of the Commission, leaving \$2,668,000 of notes outstanding in the hands of the public. Applicant's funded debt outstanding and in the hands of the public as of August 31, 1922, is reported at \$13,077,500. In this connection, it should be said that the \$5,000,000 of first and unified 6 per cent. bonds outstanding have been issued and sold for the purpose of paying in whole or in part the cost of the company's El Dorado power plant now in process of construction.

The payment of the \$1,199,000 of applicant's 6-1/2 per cent. collateral trust gold notes is secured by the deposit of \$1,724,000 of its 5 per cent. first mortgage bonds. Upon the payment of the notes, the bonds must in accordance with the provisions of applicant's first and unified mortgage or deed of trust be deposited with the trustee under such mortgage or deed of trust.

Applicant's \$2,668,000 of 6 per cent. notes are part of an authorized issue of \$5,000,000. In the agreement under which these notes were issued, the company agrees that it will not mortgage, pledge or otherwise encumber any of its property, -real, personal or mixed, unless and until it shall by mortgage or deed of trust secure the carrying out of the note agreement and the payment of the principal and interest of the notes issued and issuable under the note agreement equally and ratably with the bonds, notes or other obligations secured by such mortgage or deed of trust.

During the current year applicant executed a first and unified mortgage or deed of trust. In this instrument applicant

agreed not to issue more than \$3,000,000 of the 6 per cent. notes. It has to date issued \$2,668,000 of notes. It has also issued under the first and unified mortgage \$5,000,000 of bonds. The payment of both the notes, up to \$3,000,000, and the bonds is secured by applicant's first and unified mortgage or deed of trust. Under this instrument applicant may issue bonds in amounts equal to but not exceeding 75 per cent. of the actual and reasonable expenditures on and after March 1, 1922, for extensions of and additions to its plants and properties or to those of its subsidiary companies, provided its net income as defined in the mortgage or deed of trust is equal to one and three-quarter times the interest on applicant's outstanding bonded indebtedness including the \$2,668,000 of notes and the interest on the bonds which the trustee may be asked to certify. Reference is here made to the mortgage or deed of trust for a more complete statement of the terms and conditions under which bonds may be issued to finance in part the company's new construction.

It is of record that applicant's 6-1/2 per cent. collateral trust notes are now selling at 100-1/2; its 6 per cent. notes around 99 and its first and unified 6 per cent. bonds at from 98 to 99 and accrued interest. It is believed that the refunding of the two note issues through a 15-year note issue will materially improve the marketability of applicant's first and unified mortgage bonds. Their payment will be secured further by the deposit of the \$1,724,000 of applicant's first mortgage bonds now deposited as collateral to secure the payment of the \$1,199,000 of 6-1/2 per cent. collateral trust notes, while the \$2,668,000 of 6 per cent notes now secured by the first and unified mortgage will be paid. It is believed that through this refunding of indebtedness, applicant will be able to have some of its first and unified mortgage bonds certified for general construction purposes.

Applicant as of August 31, 1922, reported notes and accounts payable in the sum of \$1,035,717.09. Its general construction expenditures for 1923 are estimated by its general manager at from \$750,000 to \$1,000,000. To pay its current indebtedness and provide funds for its 1923 general construction, applicant has available for sale preferred stock, \$115,500 of first mortgage bonds and \$332,000 of 6 per cent. notes. It is not believed that enough money can be realized from the sale of the stock, bonds and notes to provide applicant with sufficient money to meet its 1923 obligations. Applicant, therefore, proposes <sup>to create</sup> a new note issue to pay and refund the two note issues referred to and to provide itself with a means of financing part of its 1922 and 1923 general construction expenditures.

The \$5,000,000 of notes which applicant asks permission to issue will be known as Series "A". There has not yet been filed with the Commission a complete copy of the agreement under which the notes will be issued. The testimony, however, shows that the payment of the notes will not be secured by a mortgage or deed of trust; but no additional mortgages may be created by applicant except purchase money mortgages, unless the notes issued under the agreement are ratably secured with the obligations to be issued under such mortgage. The \$5,000,000 of Series "A" notes are redeemable at any time prior to maturity, as a whole or in part, on thirty days published notice at 105 per cent. of the par value and accrued interest during the first five years of their term, at 102-1/2 per cent. of their par value and accrued interest during the next five years and at 10<sup>7</sup>/<sub>8</sub> per cent. of their par value and accrued interest during the last five years of their term. The agreement is to provide for the issue of additional notes in series bearing interest at such rate and redeemable at such prices as applicant's board of directors may determine. Such additional notes, however, may be certified only when the net earnings of applicant and its subsidiary corporations, before deducting depreciation and amortization of debt discount and expense, for a period of twelve consecutive calendar months ending not less

than sixty days prior to the date of the application for certification of notes, shall have been equal to at least one and one-half times the annual interest charge on all of applicant's bonds then outstanding, on all notes issued under the agreement and on the notes which the trustee is asked to certify. The \$5,000,000.00 of Series "A" notes are to be dated ~~November~~ <sup>October</sup> 1, 1922 and mature ~~November~~ <sup>October</sup> 1, 1937. Pending the delivery of the notes, applicant asks permission to issue interim certificates to be exchanged for the notes.

While the payment and refunding of the \$1,199,000.00 of applicant's 6-1/2 per cent. collateral trust notes and the \$2,668,000. of applicant's 6 per cent. notes through the issue of 6 per cent. notes at 91-1/2 per cent. of their face value and accrued interest will result in an increase in applicant's annual interest charges, I believe that applicant should through the sale of securities hereafter be able to absorb such increase. If applicant is unable to do this within a reasonable time, the Commission may direct it to charge some of the expense of the refunding of indebtedness, to which reference is herein made, to profit and loss in order that part of the cost of such refunding may be eliminated from the cost of money to applicant.

I herewith submit the following form of Order:

O R D E R

WESTERN STATES GAS AND ELECTRIC COMPANY having applied to the Railroad Commission for permission to execute an agreement under which it intends to issue notes and to issue and sell \$5,000,000.00 of notes, 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 the issue of \$5,000,000.00 of notes is reasonably required by applicant and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expenses or to income;

IT IS HEREBY ORDERED, that WESTERN STATES GAS AND ELECTRIC COMPANY be, and it is hereby, authorized to issue and sell,

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for cash, on or before April 1, 1923, at not less than 91-1/2 per cent. of their face value and accrued interest, \$5,000,000 of Series "A" 6 per cent. notes due ~~November~~ <sup>October</sup> 1, 1937, or interim certificates of a like amount; provided that all moneys obtained from the sale of the interim certificates be deposited with a trustee or trustees, subject to a condition that if the notes are not issued the moneys shall be returned to the purchasers of the interim certificates. No notes may be delivered until the Commission has authorized the execution of the agreement under which the notes will be issued.

. IT IS HEREBY FURTHER ORDERED, that WESTERN STATES GAS AND ELECTRIC COMPANY shall file with the Commission, as soon as available, and in any event within thirty days after the expiration of the authority herein granted, a statement showing in detail the entire cost of paying or refunding the \$1,199,000 of 6-1/2 per cent. collateral trust notes and the \$2,668,000 of 6 per cent. notes referred to herein through the issue of the notes herein authorized, such statement to include among other expenses a proper proportion of the cost of creating the new note indebtedness, the loss of interest through the issue of interim certificates or notes prior to the use of the proceeds, the discount on the notes issued, the premium on the notes paid or refunded and the amount expended to pay the principal of the notes.

The authority herein granted is subject to further conditions as follows:

- (1).---Upon receiving authority to execute an agreement under which the \$5,000,000 of Series "A" notes may be issued, applicant may use such part of the proceeds as may be necessary to pay or refund the \$1,199,000 of 6-1/2 per cent. collateral trust notes due August 1, 1923 and the \$2,668,000 of 6 per cent. notes due February 1, 1927. The remainder of the proceeds

shall be deposited with a bank or banks or with a trust company or companies and expended only for such purposes as the Railroad Commission may authorize.

- (2).--If applicant exercises the authority herein granted, the Commission reserves the right to direct applicant hereafter to charge to profit and loss a part of the expense of refunding the two note issues, to which reference is herein made, and to consider in any rate or other proceeding, when pertinent, only the reasonable cost of money to applicant.
- (3).--The authority herein granted will not become effective until applicant has paid the fee prescribed by Section 57 of the Public Utilities Act.
- (4).--Western States Gas and Electric Company shall keep such record of the issue and sale of the notes 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.

IT IS HEREBY FURTHER ORDERED that upon the payment of the \$1,199,000 of 6-1/2 per cent. collateral trust notes; applicant's first and refunding mortgage bonds (now first mortgage bonds) deposited as collateral to secure the payment of such notes, shall be delivered to the trustee under applicant's first and unified mortgage or deed of trust.

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 18<sup>th</sup> day of October, 1922.

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COMMISSIONERS.