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Decision No. 11432.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF
THE STATE OF CALIFORNIA

In the Matter of the Application of
SAN GORGONIA POWER COMPANY,
a corporation, for permission to
issue stocks and bonds and to mort-
gage property to secure said bonds,
for permission to enter into a cer-
tain contract and lease, and for a
certificate of public convenience
and necessity;

and

In the Matter of the Application of
THE SOUTHERN SIERRAS POWER COMPANY,
a corporation, to enter into a cer-
tain contract and lease, for the pur-
chase of power.

Application

Number

8310.

O'Melveny, Millikin, Tuller & MacNeil, by Sayre MacNeil
and Warren Lee Pierson, for San Gorgonia Power
Company;

Henry W. Coil and E.B. Criddle for The Southern Sierras
Power Company;

H.L. Carnahan and Thomas C. Yaeger for Coachella Valley
County Water District, protestant.

BRUNDIGE, Commissioner.

O P I N I O N.

In this application the Railroad Commission is asked to
make its order declaring that public convenience and necessity
require SAN GORGONIA POWER COMPANY to construct two small hydro-
electric plants near Banning; authorizing it to execute a mort-
gage and issue \$450,000.00 of first mortgage seven per cent.
serial bonds and \$500,500.00 of stock for the purposes indicated
below; and permitting it to lease its properties, when construc-
ted, to The Southern Sierras Power Company.

San Gorgonia Power Company was organized on or about February 10, 1922, with an authorized capital stock of \$1,000,000, divided into 10,000 shares of the par value of \$100.00 each, all shares being common. The company proposes to deliver \$500,000 par value of its stock to acquire the right to use rights and properties from Consolidated Reservoir and Power Company, and to issue \$500 par value additional stock to qualify its directors.

Consolidated Reservoir and Power Company was organized in 1909. It is of record that it acquired through purchase certain water rights, easements and rights of way along the Whitewater river and its branches and undertook the construction of a project for the purpose of securing water for irrigation and domestic use and the generation of electrical energy. It constructed intakes, diversion works, canals, flumes and other properties, which to date have been used only for the purpose of delivering water for irrigation and domestic use. It diverts water from the east branch and the south branch of the south fork of the Whitewater river into the San Gorgonia watershed. From thence it conveys water to the Banning Heights Mutual Water Company to the capacity of the pipe lines of the Mutual Water Company and permits the surplus waters to sink into the soil to augment the underground water supply of the Banning Water Company.

Consolidated Reservoir and Power Company also acquired a tract of land, about 1500 acres, known as the Banning Heights Tract in the San Gorgonia Canyon. While the canals of the Consolidated Reservoir and Power Company were being constructed, it subdivided the Banning Heights Tract and then organized the Banning Heights Mutual Water Company to operate the water system over the tract and any adjoining lands which may be reached by its system. By an agreement dated December 30,

1913, Consolidated Reservoir and Power Company conveyed to the Banning Heights Mutual Water Company, its successors and assigns the use of all water for irrigation and domestic purposes and the water rights which it had appropriated and then owned and controlled in and from the Whitewater river. The agreement reads in part as follows:-

"That the said first party (Consolidated Reservoir and Power Company) for a good and valuable consideration to it in hand paid the receipt of which is hereby acknowledged, does by these presents grant, transfer and convey unto the said second party, (Banning Heights Mutual Water Company) its successors and assigns, the use of all water and the water rights which first party has appropriated and now owns and controls in and from the Whitewater river in Riverside County, California, by second party, and its stockholders, to whom second party may deliver, furnish and distribute the same for irrigation and domestic use only; also the pipe lines, weir, canals and other water conduits heretofore constructed by the said first party, and extending southerly from the second or lower power plant site of the said first party in the San Geronimo Canyon in said county and state, to the Banning Heights tract, situated on the mesa northerly from Banning in said county and state, and all pipe lines, canals, weirs and other water conduits now being constructed and which may hereafter be constructed over the said Banning Heights tract and adjacent lands for the distribution of such water, to and over the said lands for irrigation and domestic use; and the right to take and divert such water for said uses only from the Whitewater river and conduct and flow such water into, through and by means of the intake, dams, weirs, canals and other water conduits heretofore constructed by said first party from the said Whitewater river, to the said second lower power plant site of the said first party in the said San Geronimo Canyon, and thence through the lower pipe lines above conveyed to the said Banning Heights Tract and other lands for such uses thereon.

The foregoing rights are hereby granted to second party and its successors or assigns subject to the contract heretofore made by the said first party with the Banning Water Company, relating to waste water, and nothing herein shall in any manner interfere with or affect the terms of such contract and the rights of the Banning Water Company thereunder.

The said first party hereby excepts from the operation of this conveyance and hereby expressly reserves to itself, its successors and assigns the sole and exclusive right to use all such water and water rights, intake, weirs, dams, canals, pipe lines and water conduits and system for power purposes and as power for propelling machinery, generating and developing electric current and all and any purposes which

"may be used as power at any and all points along the said canals, pipe lines and water systems and to change, if necessary for such use as power, the location, size, character or course of any intake, weir, canal, pipe line or other part of said system, to build reservoirs, and store water for use as power, to erect machinery, power plants or other adjuncts necessary or convenient to use and utilize such water for power purposes; and nothing in this conveyance shall be taken or construed in any manner to affect or militate against the rights hereby reserved as above mentioned, and the right to do all things necessary and convenient, to exercise and carry out and enjoy the rights above mentioned; provided, however, that the rights hereby reserved shall be so exercised, carried out and enjoyed by the said first party, its successors and assigns, in such a manner as not to prevent or materially interfere with the rights to the use thereof for irrigation and domestic purposes by the said second party, its stockholders or other persons to whom second party may furnish and deliver the same."

The agreement further provides that all expenses necessary to maintain the water rights in, and the water system from the Whitewater river to the second or lower power plant site, less whatever portion of such expenses may be paid by or collected from the Banning Water Company under the contract of January 10, 1913, shall be borne and paid by Consolidated Reservoir and Power Company and the Banning Heights Mutual Water Company, or their successors and assigns in equal proportion.

By the agreement of January 10, 1913, between Consolidated Reservoir and Power Company and Banning Water Company, the former agreed to discharge into the San Gorgonia River Canyon its waste or surplus waters.

Consolidated Reservoir and Power Company now proposes to transfer to San Gorgonia Power Company the power rights in all water and water rights which it has heretofore appropriated and now owns and controls in and from Whitewater river and which may be taken and diverted from said river through the present intake to its canal system at an elevation of about 7000 feet and to divert and carry the same therefrom down through San Gorgonia Canyon; also intakes, points of diversion, canals,

pipe lines, weirs and all other water conduits heretofore constructed from said point of intake in the Whitewater river down to a point known as the lower power plant site located at or near what is generally known as "Camp Comfort" in the San Gorgonia Canyon at a point where the canal system connects with the pipe line or canal of Banning Heights Mutual Water Company together with the right to make such changes as may be necessary to use such rights and canal system for the conducting of water as power for propelling machinery and generation of electricity, "and the said water rights and water system are conveyed to said second party (San Gorgonia Power Company) only for use, and said second party, his heirs or assigns, shall use the same only for the purpose of power in the generation of electricity."

The use of the water rights and water system for power purposes is transferred subject to the agreement between Consolidated Reservoir and Power Company and Banning Heights Mutual Water Company and the agreement between Consolidated Reservoir and Power Company and Banning Water Company, to which agreements reference has been made.

It appears that San Gorgonia Power Company, does not, under the proposed deed, get title to any properties. It merely secures a right, subject to the conditions mentioned and others, to use such properties for power purposes. The deed imposes an obligation upon San Gorgonia Power Company to expend not less than \$22,500 in the conservation and distribution of waters in the Whitewater river at or near the intake of the canal system for the purpose of acquiring water in addition to that which naturally flows into the canal system from the Whitewater river, and further requires San Gorgonia Power Company to pay half the cost of a regulating reservoir below the lowest power plant, if Banning Heights Mutual Water Company desires to

construct such a reservoir. The deed also requires San Gorgonia Power Company, at its own expense, to permit all water flowing in the Whitewater river at the intake, to flow and be received into the canal system to the extent of not less than its present capacity and to flow through the same and deliver said water into the pipe line or canals belonging to the Banning Heights Mutual Water Company, or into a reservoir constructed by said company or into both a reservoir or pipe lines and canals.

San Gorgonia Power Company requests permission to issue in payment for the rights and properties above described \$500,000.00 of common stock. It is of record that the physical structures described in the application cost \$257,382.95 and that the water rights for power purposes have been valued by F.C. Finkle, a witness for the company, at \$275,000.00. Following the hearings in this matter, J.G. Scarborough, a director of Consolidated Reservoir and Power Company, filed a statement in which he reports the cost of the water rights to Consolidated Reservoir and Power Company at \$160,000.00. This covers the cost of the water rights now used to deliver water for irrigation and domestic use and also the rights which would be used to develop electric energy. The \$160,000.00 includes an item of \$50,000.00 said to represent the "purchase of the Banning Water Company's consent to diversion and operation through the San Gorgonia Valley." It appears that there has been allocated to the power project the entire cost of the physical structures and a value of \$275,000.00 for water rights. Inasmuch as the water rights and physical structures of Consolidated Reservoir and Power Company are being and will be used if applicants' plans are consummated, both for the purpose of developing electric power and delivering water for irrigation and domestic use, I believe that at

least half of the cost of the water rights and physical structures should be allocated to such irrigation and domestic use.

The testimony shows that the \$500,000.00 of stock, if authorized by the Commission, will not be issued to the Consolidated Reservoir and Power Company but to R.R. Scarborough, who under date of November 2, 1921 agreed to acquire the properties and who will presumably assign his agreement to San Gorgonia Power Company. He agreed to pay for the rights and properties \$50,000.00 in cash on the delivery of the deed and assume certain additional undertakings involving the expenditure of approximately \$40,000.00. The cost of the additional undertakings is incorporated in the proposed deed which is to be executed to the San Gorgonia Power Company. R.R. Scarborough also testified that the San Gorgonia Power Company desired permission to issue bonds to pay the \$50,000.00 which he agreed to pay for the properties and which, according to his testimony, constitutes a lien thereon. Thus, he would transfer all his liabilities under the agreement to the San Gorgonia Power Company, and if the application were granted, receive \$500,000.00 of the company's common stock. The Commission will not permit the San Gorgonia Power Company to assume the payment of the \$50,000.00. Neither does the Commission believe that the record in this proceeding warrants the issue of more than \$100,000.00 of stock by the San Gorgonia Power Company in payment for the rights and properties which it will acquire under the deed filed in this proceeding.

There exists in the diversion canal available drops or head of approximately 2650 feet. To utilize this fall to generate electric energy, San Gorgonia Power Company proposes to construct two hydroelectric plants. Plant No. 1 located at a point called Big Oaks, will consist of one 1500 K.V.A. unit generating under a head of from 1750 to 1779 feet. Plant No. 2 located in what is known as Camp Comfort, will consist of one 900

K.V.A. unit generating under a head of from 870 to 895 feet. The energy will be transmitted at 33,000 volts for a distance of ten miles to Banning and from there delivered into The Southern Sierras Power Company system.

In "Exhibit G" San Gorgonia Power Company has submitted an estimate of the cost of its proposed construction work, which summarized is as follows:-

Estimated cost of Plant No. 1,	\$168,992.70
Estimated cost of Plant No. 2,	126,273.70
Estimated cost of transmission line,	19,565.65
Water conservation work,	17,000.00
Contingencies on water conservation work,	850.00
Engineering on water conservation work,	850.00
Interest during construction,	<u>20,000.00</u>
Total,	\$353,532.05.

To obtain the necessary moneys to carry out its program, San Gorgonia Power Company proposes to issue and sell \$450,000.00 of first mortgage seven per cent. serial bonds. It reports that it has made arrangements to sell its bonds at 93 per cent of their face value. It desires to use the proceeds to pay for the aforementioned construction work and to pay outstanding indebtedness amounting approximately to \$65,000.00. The \$65,000.00 includes the \$50,000.00 which R.R. Scarborough agreed to pay for the properties. The \$50,000.00 is an obligation, which under the circumstances, should not be transferred to San Gorgonia Power Company.

San Gorgonia Power Company asks permission to execute a mortgage to secure the payment of these bonds. The proposed mortgage, a copy of which is attached to the application, provides for a total issue of \$450,000.00 of bonds bearing interest at seven per cent. per annum and maturing serially in varying amounts on the first of October of each of the years 1924 to 1947, both inclusive.

The mortgage provides that \$65,000.00 of bonds be authenticated and delivered to the company forthwith and that \$30,000 of bonds be reserved to pay interest during construction. The remaining bonds, or the proceeds from the sale of the remaining bonds, may be drawn down from time to time in amounts not in excess of seventy-five per cent. of the cost of the construction work. Upon 35 days after the completion of the proposed plants, the trustee shall certify and deliver to the company all of the bonds then unissued or pay to it any moneys on deposit with it.

The proposed mortgage contains a condition requiring the company to pay to the trustee annually the sum of \$2,000.00 out of its net earnings, or if the net earnings do not equal \$2,000.00, all of such net earnings until the sum of \$40,000.00 is on deposit, when it can be used for renewals and replacements to its plants and properties.

The order herein will permit the issue and sale of only \$400,000.00 of bonds, and the use of the proceeds for the purposes indicated in the order. The order of the Commission rather than the terms of the mortgage govern the use of the bonds proceeds.

San Geronia Power Company proposes to lease its properties, when completed, to The Southern Sierras Power Company in accordance with the terms and conditions of a contract and lease entered into by and between the two parties on May 1, 1922. Under the terms of this lease San Geronia Power Company agrees to complete its proposed construction work before May 1, 1925. If not completed prior to that date, The Southern Sierras Power Company may terminate the lease. If the plants are completed, the lease is to continue in effect until May 1, 1952. The Southern Sierras Power Company agrees to operate the plants daily to their full capacity from 7 a.m. to 11 p.m. and to pay

for the electric energy generated at the rate of .0065 cents per K.W.H. The lease contains the following provision relating to operating costs:

"The Sierras Company agrees that after delivery of possession of said plants to it, and during the term of this lease, it will operate the said plants, system, works and machinery, furnish and employ all operators, helpers, laborers and other employes, pay the salaries and wages thereof, and any compensation under the Workmen's Compensation Insurance and Safety Act or similar act of the State of California, furnish and supply all hand tools, oils, greases and other materials and supplies, and make all reasonably necessary replacements, renewals and repairs in and to said plants, system, works and machinery (not including, however, any of the open ditches above the forebays or below the tailraces of either or both of said plants), and will bear and pay the cost thereof up to and including the sum of Five Hundred dollars (\$500.00) for each of such replacements, renewals or repairs, in consideration of all of which the San Geronimo Company agrees to pay to the Sierras Company the sum of Eight hundred thirty-five dollars (\$835.00) per month on the 20th day of each month after the delivery of possession of such plants to the Sierras Company, and for and during the term hereof, which sum may, at the option of the Sierras Company, be deducted from any sum or sums due from the Sierras Company to the San Geronimo Company as rental hereunder or otherwise. The San Geronimo Company agrees to bear and pay the cost and expense in excess of Five hundred dollars (\$500.00) for each of such replacements, renewals or repairs, and also the whole cost and expense of all replacements, renewals, or repairs in or to said open ditches above the forebays and below the tailraces of either or both of said plants, and also the whole cost and expense of all other replacements, renewals or repairs not hereinbefore agreed to be borne by the Sierras Company. It is agreed that if several parts of said plants, works or machinery shall fail or become impaired, worn out, damaged, or destroyed at the same time, and as the common result of the same accident, breakdown, occurrence or cause, then all of the replacements, renewals or repairs made necessary thereby shall be considered a single replacement, renewal or repair."

It is thought that the output of these two plants will have a regulatory effect on the southern portion of the system of The Southern Sierras Power Company and in that way, better service conditions. I believe the contract between the two companies, under existing conditions, is a reasonable one and that

the Commission should authorize its execution, subject to such changes in the rate from time to time as conditions may warrant.

At the hearing representatives of the Coachella Valley County Water District made formal protest to the granting of this application on the grounds that although the Consolidated Reservoir and Power Company had been diverting water from the Whitewater river for a number of years, it was not entitled to more than the ditch would carry; and secondly, that they were not entitled to use more water for development of power than had heretofore been put to advantageous use, which they claimed does not exceed 150 miner's inches. It appears that the water district has made formal application to the State Water Commission for determination of the rights of all parties to waters of the Whitewater river or its tributaries and that it felt that this Commission should be advised of its position and contention. Of course no order of this Commission can prejudice rights which may be possessed by parties other than Consolidated Reservoir and Power Company.

I herewith submit the following form of Order:

O R D E R.

Application having been made to the Railroad Commission for a certificate of public convenience and necessity and for an order authorizing the issue of stock and bonds and the execution of a mortgage and lease, public hearings having been held and the Commission being of the opinion that the application should be granted as herein provided and that the money, property or labor to be procured or paid for by such issue is reasonably required for the purposes specified herein and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expenses or to income;

IT IS HEREBY DECLARED, that public convenience and necessity require the construction by SAN GORGONIA POWER COMPANY of the two hydroelectric plants described in this application.

NSM IT IS HEREBY ~~ORDERED~~ ORDERED, that SAN GORGONIA POWER COMPANY be, and it is hereby, authorized to execute a mortgage substantially in the same form as that filed in this proceeding and to issue and sell at not less than 93 per cent. of face value \$400,000.00 of its first mortgage seven per cent. serial bonds.

IT IS HEREBY FURTHER ORDERED, that SAN GORGONIA POWER COMPANY be, and it is hereby, authorized to issue \$100,500.00 of its common capital stock.

IT IS HEREBY FURTHER ORDERED, that SAN GORGONIA POWER COMPANY and THE SOUTHERN SIERRAS POWER COMPANY be, and they are hereby, authorized to execute a contract and lease substantially in the same form as that filed with the application herein.

IT IS HEREBY FURTHER ORDERED, that this application in so far as it relates to the issue of \$400,000.00 of stock and \$50,000.00 of bonds be, and it is hereby, dismissed without prejudice.

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

(1) - The authority herein given to execute a mortgage is for the purpose of this proceeding only, and is granted only in so far as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval as to such other legal requirements to which said mortgage may be subject.

(2) - Of the stock herein authorized, \$100,000.00 shall be delivered in full payment of the rights and properties described in the deed filed in this proceeding on November 9, 1922, all of which rights and properties must be transferred to San Gorgonia Power Company,

if it issues the \$100,000.00 of stock or any part thereof; and \$500.00 shall be sold at par to qualify directors, and the proceeds used to pay organization expenses.

- (3) - The proceeds from the sale of the bonds herein authorized shall be used to pay the cost of constructing the following properties or pay indebtedness incurred --

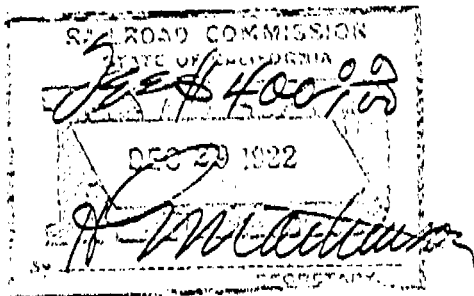
Plant Number One about	\$168,992.70
Plant Number Two about	126,273.70
Transmission line about,	19,565.65
Water Conservation work,	22,500.00
Contingencies and engineering on Water Conservation work, about,	2,250.00
Interest during construction,	20,000.00
To pay indebtedness other than the \$50,000 referred to in the preceding opinion, about,	12,417.95
Total,	<u>\$372,000.00</u>

- (4) - The authority herein given to execute a contract and lease is limited in that the approval of the rate of $6\frac{1}{2}$ mills referred to herein is subject to such changes by the Railroad Commission as conditions from time to time may warrant.
- (5) - San Geronia Power Company shall keep such record of the issue and sale 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 in so far as applicable is made a part of this order.
- (6) - The authority herein granted to issue bonds will become effective only upon the payment of the fee prescribed in Section 57 of the Public Utilities Act.
- (7) - The authority herein granted to issue stock and bonds and to perform other acts authorized by this order will become effective upon the payment of the aforementioned fee but such

authority will expire on July 31, 1923.

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 29th
day of December, 1922.



H. T. Brundage
Waring Martin
H. J. Sanders

Commissioners.