

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the application of

ORO ELECTRIC CORPORATION for a

Certificate under Section 50 (a) of the Public Utilities Act that the present and future public convenience and necessity require and will require the construction of transmission and distribution lines for electric service in the counties of Plumas, Butte, Yuba, Sutter, Colusa, Glenn, Yolo, Solano, Contra Costa, Alameda, Sacramento, San Joaquin and Calaveras and an extension in and through said counties of the existing lines of said corporation; and for a preliminary order under Section 50 (c) of said Act declaring that the Commission will hereafter, upon application therefor, after said corporation has obtained franchises and permits it contemplates securing, but which have not as yet been granted to it, issue the necessary certificate or certificates that the present or future public convenience and necessity require or will require the exercise of the rights and privileges granted by said contemplated franchises and permits to construct, maintain and operate transmission and distribution lines and equipment in said counties.

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APPLICATION

No. 64.

Goodfellow, Ellis and Orrick and W. H. Orrick for
Oro Electric Corporation.

Charles P. Cutten for Pacific Gas & Electric Company.

Chickering & Gregory and Allan Chickering for
Western States Gas and Electric Company.

E. Whaley for Northern California Power Company, Consolidated.

Frank E. Powers for Yacaville Water & Light Company.

OPINION.

Thelen, Commissioner.

This is an application of Oro Electric Corporation for a certificate of public convenience and necessity and for an order that this Commission will hereafter issue its certificate permitting the exercise of rights or privileges under franchises or permits which applicant contemplates securing but which have not as yet been granted to it.

Applicant was incorporated on March 13, 1911 and under its articles of incorporation has general authority, among other matters, to transact the business of generating, transmitting and

delivering electricity for light or power within the State of California. Applicant has heretofore purchased from Oro Water, Light and Power Company its electrical plant and distributing system serving Oroville and vicinity and now contemplates constructing a reservoir in Humbug Valley, Plumas County, near the confluence of Yellow Creek and the north fork of the Feather River and leading the water thence through a conduit and down a drop of 1900 feet to a power house to be constructed on the north fork of the Feather River near Belden, on the line of the Western Pacific Railway. Said plant is to be built in units and is to have an average output of 20,000 kilowatts with a possibility of an increase to 40,000 kilowatts. The application asks that this Commission make its order that the present or future public convenience and necessity require or will require the construction of said plant and also the construction of transmission and distribution lines and equipment in the counties of Plumas, Butte, Sutter, Colusa, ^{Glenn}/Yuba, Yolo, Solano, Contra Costa, Alameda, Sacramento, San Joaquin and Calaveras, under the provisions of Section 50-a of the Public Utilities Act, and also that this Commission make its order that it will hereafter issue a certificate permitting the exercise of rights or privileges under franchises or permits which applicant contemplates securing but which have not as yet been granted in each of said counties.

At the hearing, applicant's counsel defined with greater particularity the territory through which applicant desires to build its transmission and distribution lines as follows:

Plumas County, in so far as affects the construction of the plant in and about Humbug Valley and the construction work along the north fork of the Feather River to Butte County; all of Butte County, except the towns of Chico, Biggs and Gridley and the territory which applicant is now serving; all of Yuba County except the city of Marysville; all of Sutter County; all of Colusa County; the southerly half of Glenn County; all of Yolo County; all of Solano County, except the cities and towns of

Vacaville, Dixon, Fairfield, Suisun, Vallejo and Benicia; all of Contra Costa County except the cities of Richmond and Antioch; all of Alameda County, except the cities of Oakland, Berkeley and Alameda; all of Sacramento County, except the city of Sacramento; all of San Joaquin County north of the right of way of the Southern Pacific Company extending from Antioch through Oakley, Bixler, Stockton and Burnham to the easterly end of the county, excluding the cities of Stockton and Lodi; and that portion of Calaveras County which extends from its westerly boundary south of Mokelumne River to the town of Camanche.

Northern California Power Company Consolidated appeared and was granted leave to make its protest to the granting of the application in so far as affects Colusa County and the southerly half of Glenn County. Pacific Gas & Electric Company appeared and was given leave to file its written answer and protest, in which it denies generally the allegations of the application and alleges that the territory specified in the application is already being fully supplied by it with electricity for light, heat and power, with the exception of certain portions thereof which are being adequately and sufficiently supplied by public utilities other than the applicant or said protestant and that applicant intends to duplicate protestant's investment and distribution system to the detriment of the consumers of electricity in said territory and of said protestant. Western States Gas and Electric Company appeared and was given leave to file its written answer and protest, in which it denies that public convenience and necessity will require the granting of said application from a point where the proposed new construction first becomes parallel to the line of the Western Pacific Railway Company and following the line of said proposed new construction to its termination at Camanche in Calaveras County, all the territory on the east side of the proposed new construction down to the point where the same leaves the line of the Western Pacific Railway Company and also the territory on both sides of said proposed new construction from the point where

the same leaves the line of the Western Pacific Railway Company, and also the City of Richmond and its immediate vicinity. Protestant further alleges that protestant in said territory does adequately supply electric current wherever demand exists, with adequate service and at reasonable rates and denies that there is any necessity for such service on the part of any other utility. Vacaville Water and Light Company also appeared and was given leave to file its written answer and protest, in which it alleges that for more than twenty years last past it has been and now is engaged in the business of supplying Vacaville and its inhabitants and the territory surrounding Vacaville for a distance of approximately two miles in all directions and the inhabitants of such territory with electricity for light, heat and power and denies that the public convenience and necessity will be promoted by the issuance to petitioner of a certificate in so far as said territory is affected.

In rendering my opinion on this application I shall bear in mind the principles laid down by this Commission after mature deliberation in the case of Pacific Gas & Electric Company vs. Great Western Power Company, Case No. 269, and particularly those portions of the opinion which read as follows:

"It certainly is true that where a territory is served by a utility which has pioneered in the field, and is rendering efficient and cheap service and is fulfilling adequately the duty which, as a public utility, it owes to the public, and the territory is so generally served that it may be said to have reached a point of saturation as regards the particular commodity in which such utility deals, then certainly the design of the law is that the utility shall be protected within such field: but when any of these conditions is lacking, the public convenience may often be served by allowing competition to come in.

Only until the time of threatened competition shall the existing utility be allowed to put itself in such a position with reference to its patrons that this Commission may find that such patrons are adequately served at reasonable rates. By announcing this principle, we hope we shall hold out to the existing utilities an incentive which will induce them voluntarily, without burdening this Commission or other governmental authorities, to accord to the communities of this state those rates and that service to which they are in justice entitled, and to the new utilities we shall likewise hold out the incentive that on the discovery by them of territory which is not accorded reasonable service and just rates they may have the privilege of entering therein if they are willing to accord fair treatment to such territory."

While the evidence in this application shows that certain portions of the territory covered thereby are already served or partially served by existing utilities of like character, it also

shows that the proposed transmission and distribution lines of applicant will traverse large areas of land which are at present served by no other like utility and that the development of this territory and particularly the cutting up of large tracts of land and the development of intensive cultivation resulting from the application of electric power to the land for the development of water supply will very materially enhance the prosperity of this section of the state. Whenever the Commission finds such a utility knocking at its door it will certainly do all in its power, provided that the utility is honestly and wisely conceived and subject to proper regulation and control in the interest alike of its bondholders and stockholders and of the rate paying public, to assist such utility and thereby to enhance the general prosperity of the state. However, public policy will not be subserved by such encouragement to every utility which may apply to this Commission. Unless such utility is able to render to the public service at reasonable rates and to give satisfactory assurance of honest and prudent management, the action of the Commission in encouraging such utility may possibly result in great economic waste and financial loss. Hence it becomes necessary in each case to inquire into the financial condition of applicant and into its probable ability to serve the public at reasonable rates, both where the intention is to compete with an existing utility or to occupy entirely new territory.

This Commission accordingly called upon the applicant to furnish its proposed schedules of rates which it intends to establish and to show that with such rates applicant could make a reasonable profit on its investment. Applicant accordingly presented the following schedule of rates for power for pumping and irrigation purposes in the territory to be served:

2 3/4¢	per KWH for the first 50 KWH per installed HP per month
2 1/2¢	" " " " next 50 KWH per installed HP " "
2 ¢	" " " " next 50 KWH per installed HP " "
1 3/4¢	" " " " next 50 KWH per installed HP " "
1 1/2¢	" " " " all over 200 KWH " " HP " " with a

minimum in any event of \$6.00 per year per horse power installed.

The schedules now in force on the part of Pacific Gas & Electric Company and Western States Gas and Electric Company, which

companies will be applicant's chief competitors if the application is granted, are identical and are as follows:

3¢ per KWH for the first 1000 KWH per month
2 1/2¢ per KWH for the next 1000 KWH per month
2¢ per KWH for all over 2000 KWH per month, with a minimum in any event of \$6.00 per year per horse power installed.

The Commission has made a comparison of the rates so in force with those proposed by applicant and finds that for small motors, particularly those of five and ten horse power, the rates proposed by applicant, if used by consumers, will result in the payment of a considerably smaller charge than the existing rates, but that for fifty horse power motors and over, the charges of the existing companies will be less than those of applicant. The proposed rates of the Northern California Power Company, Consolidated, are slightly lower than those of the Pacific Gas & Electric Company and the Western States Gas and Electric Company, but for the small motors the rates of applicant are somewhat less than those of the Northern California Power Company, Consolidated. The announced purpose of applicant is to induce the users to install small motors wherever possible and to use power as continuously as may be. Applicant has announced that it would offer the same rate to all consumers, whether near or at some distance from its main lines, and that it will serve all sections of territory as to which it produced testimony with a liberal policy as to extensions.

As an alternative schedule which applicant proposes to present to its customers and to give to them in case they do not desire to take the schedule hereinbefore set out, it gives the following schedule:

2 3/4¢ for the first 1000 KWH used per month
2 1/4¢ " " next 1000 KWH " " "
1 3/4¢ " all over 2000 KWH used per month, with a minimum of \$6.00 per year per horse power installed.

Applicant did not produce a rate for lighting.

The Commission also made a careful investigation into applicant's financial condition and into the transactions which accompanied the issue of its stocks and bonds. My conclusions in this respect will be given after a statement of my findings as to the condition in each of the counties through which applicant

seeks permission to build its transmission and distribution lines.
at the outset
It should be distinctly understood, however, that wherever in the following portions of this opinion I find that applicant's petition should be granted as to any specific territory or that the present or future public convenience and necessity require or will require the construction prayed for, each of such findings is made subject to the express condition precedent that the conditions which I shall specify with reference to applicant's financial affairs shall first have been complied with as hereinafter specified. I find that unless such conditions are complied with, the present or future public convenience and necessity will not and do not require the construction prayed for or any part thereof and that applicant's petition should in that event be denied in its entirety.

As to Plumas County, applicant seeks permission to construct its plant in and about Humboldt Valley and to perform the necessary construction work thence down the north fork of the Feather River to the Butte County line. I recommend that the application be granted as to this county.

As to Butte County, applicant asks for this Commission's certificate for the entire county, except the cities and towns of Chico, Biggs and Gridley and those portions of the county which are at present being served by applicant, being chiefly the City of Oroville and surrounding territory. The distributing systems in the towns of Biggs and Gridley are owned by those respective municipalities, which buy their power from the Pacific Gas & Electric Company. With the exception of the electrical energy supplied to the cities or towns of Chico, Biggs and Gridley and that supplied by the Pacific Gas & Electric Company to a few dredgers in the vicinity of Oroville, the county is at present supplied with no electrical energy other than that furnished by applicant in and about Oroville. The evidence shows that there are very considerable possibilities for development in the way of both light and power considerable in this county and that there is a present unsupplied demand. I recommend that the application be granted as to Butte County as prayed for. In this connection I would draw attention to the fact

that the lighting rate in the City of Oroville is at present 10 cents per kilowatt hour, with an additional 2 cents in case the bill is not paid by the 15th day of the month. In response to an inquiry from the Commission, applicant gave assurance that in case its application is granted, it will at once reduce this rate.

As to Yuba County, applicant asks for this Commission's certificate for the entire county, except the City of Marysville, which is served by the Pacific Gas & Electric Company. I find that while the Pacific Gas & Electric Company has very recently made a few extensions to the north and to the south of the city, and is serving a limited territory in the vicinity of Wheatland, the county as a whole, outside of the City of Marysville, is supplied with almost no electrical energy, with at least some demand and considerable opportunity for development. I recommend that the application be granted as to Yuba County as prayed for.

As to Sutter County, applicant asks for this Commission's certificate for the entire county. The Pacific Gas & Electric Company at present serves a district in the vicinity of Yuba City and also has a distribution line westerly to the City of Meridian, but most of the remaining portions of the county are at present unsupplied. There is considerable evidence before the Commission as to a demand for electrical energy, particularly in the northern portion of the county. I recommend that the application be granted as to the entire county as prayed for.

As to Colusa County, applicant asks for this Commission's certificate for the entire county. The Pacific Gas & Electric Company at present supplies the City of Colusa and has put in a few motors along the Sacramento River north and south of Colusa and also a pump in Reclamation District No. 108. Mr. Oscar Robinson, the Mayor of Colusa, testified that the rates of the Pacific Gas & Electric Company within the Town of Colusa are reasonable, that the service of the company within the town is satisfactory and that its policy as to extensions is reasonable, and there is no satisfactory evidence to the contrary. Under the principles announced in the case of Pacific Gas & Electric Company vs. Great Western Power Company, I

recommend that the application be denied, without prejudice, as to the Town of Colusa.

The Northern California Power Company, Consolidated, has within the last year built its transmission line through the towns of Princeton, Maxwell, Williams and Arbuckle to College City, which is the extreme southern point served by this company. This company's total transmission lines in the county of Colusa ^{between} amount to 45 and 50 miles and it has only between 15 and 20 miles of distributing lines within the county, of which only 7 miles are outside of the towns hereinbefore specified. Applicant presented no evidence whatsoever with reference to the towns served by the Northern California Power Company, Consolidated. Under the principles announced in the case of Pacific Gas & Electric Company vs. Great Western Power Company, supra, I accordingly recommend that the application be denied, without prejudice, as to these towns. On the other hand, there is considerable evidence with reference to a demand for power and light outside of these towns, and I accordingly recommend that the application be granted as to all of Colusa County except the Town of Colusa and the towns of Princeton, Maxwell, Williams, ~~and~~ Arbuckle and College City.

As to Glenn County, applicant asks this Commission's certificate for the southerly half of the county. The only power at present being supplied in this territory is supplied by the Northern California Power Company, Consolidated, to the Town of Willows, with possibly a few customers within a mile or two of the town. There is no evidence with reference to the Town of Willows itself. I find that there is some demand for power in the territory affected outside of the Town of Willows, with some considerable opportunity for development and accordingly recommend that the application as to this county be granted as prayed for, except as to the Town of Willows. As stated in the case of Pacific Gas & Electric Company vs. Great Western Power Company, supra, the burden of proof is upon applicant to make out a case of public convenience and necessity,

and if applicant fails to present evidence with reference to a territory which is already served by an existing utility and as to which that utility enters its protest, the application must be denied as to such territory.

✓ As to Yolo County, applicant asks for this Commission's certificate for the entire county. The Pacific Gas & Electric Company is at present serving the City of Woodland and a limited territory to the south and east thereof, but the entire remaining portion of the county is without any electrical service whatsoever. The testimony shows great possibilities for power development in this county, with some considerable demand at present. Apart from the City of Woodland I recommend that the application be granted as prayed for.

As to the Town of Woodland, there is a direct conflict in the evidence. Each side presented a number of ^{apparently} equally reliable witnesses who testified to diametrically opposing conditions and neither counsel was able to break down the testimony of the witnesses presented by the other side. J. O. Maxwell, the Mayor of Woodland, W. F. Nixon, editor ^{of the} Woodland Mail and other responsible parties testified to a lack of power in the city, causing dimness in the lights, particularly between the hours of six and ten or eleven o'clock in the evening. On the other hand, R. H. Beamer, ex-mayor of the town, Fred. S. Snavelly, the fire chief, and others, testified that the service was entirely satisfactory, and ex-superior Judge E. E. Gaddis wrote to the Commission a letter to this same effect. The rate for lighting at the time of the filing of the application was 10 cents per kilowatt hour. While this rate has now been reduced to 8 cents, applicant cannot well take advantage of the higher rate at the time of the filing of the application for the reason that applicant has itself presented no lighting rate. In view of the direct conflict between the testimony of equally reliable parties, I find myself unable to make a recommendation at present with reference to the Town of Woodland. I accordingly recommend that no action be taken at present on the application with reference to

this town but that applicant be permitted to appear again before the Commission at any time after three months from the date of this order, at which time the Commission will take such further testimony as may be presented on both sides of the question and will then reach its decision.

As to Solano County, applicant asks for this Commission's certificate as to the entire county, except the cities or towns of Vacaville, Dixon, Fairfield, Suisun, Vallejo and Benicia. As already stated, the Vacaville Water and Light Company has filed its protest as to the City of Vacaville and the territory within a radius of two miles from the city. Applicant having introduced no evidence as to this territory, I recommend that the application be denied, without prejudice, as to the territory specified in the protest of the Vacaville Water and Light Company. With reference to the remaining portions of the county covered by the application, there is considerable evidence as to a present demand for further power and I accordingly recommend that the application be granted as prayed for, excluding the cities and towns specified by applicant, with the addition that the application be denied as to the territory within a radius of two miles of the City of Vacaville.

As to Contra Costa County, applicant asks for this Commission's certificate for the entire county, except the cities of Antioch and Richmond. The City of Richmond and the immediate vicinity thereof are being supplied by the Pacific Gas & Electric Company and the Western States Gas and Electric Company. The Pacific Gas & Electric Company and the Great Western Power Company run their lines through the northern portion of the county and the Pacific Gas & Electric Company has recently made extension in the San Ramon Valley to Danville in the southern portion of the county. There is some evidence with reference to a demand for ~~an~~ additional power in that portion of the county which lies east of a north and south line running immediately east of the Town of Martinez. There is no evidence as to a present demand for additional power west of said line. There is evidence that the Bay front between

Richmond and Antioch offers exceptional opportunities for factory sites but no evidence that there is a present demand for electrical energy for this territory in addition to that which the existing utilities are supplying. In my judgment certificates for public convenience and necessity should not be granted as to territory in which there is no present demand for additional service and which territory is being supplied in so far as the present demand is concerned by utilities which appear in opposition to the application. I accordingly recommend that the application be granted as prayed for as to that portion of Contra Costa County which lies east of said north and south line, running immediately east of the Town of Martinez, and that the application be denied, without prejudice, as to the remaining portion of said county.

As to Alameda County, applicant asks for this Commission's certificate for the entire county, except the cities of Oakland, Berkeley and Alameda. As applicant introduced no evidence as to any present unsupplied demand for electrical energy in this county and as the application is contested by the Pacific Gas & Electric Company, I recommend that the application be denied, without prejudice, as to this county.

As to Sacramento County, applicant asks for this Commission's certificate for the entire county, except the City of Sacramento. The Pacific Gas & Electric Company at present serves the City of Sacramento and a portion of the county lying easterly thereof along the south bank of the American River. The Great Western Power Company also serves the City of Sacramento. The Western States Gas and Electric Company has its lines in the territory south of the City of Sacramento to the southern line of the county and also northeasterly from said city southerly from the American River toward Folsom.

+ The territory served by the Western States Gas and Electric Company includes the towns of Florin, Sheldon, Elk Grove and Galt. There is considerable evidence that this company has failed in its duty to the public as to all of this territory and particularly as

to the Town of Elk Grove, where the conditions are very bad. Testimony shows that there is so little power at Elk Grove that the water works are at times unable to pump water for use by the inhabitants and that there is often so little power that persons having engines must stop them for fear of burning out their motors. Western States Gas and Electric Company frankly admitted that its service in this district had not been satisfactory. The company is now taking steps to improve the service, but as it had not satisfactorily performed its duty to the public at the time the application was filed, the application should be granted with reference to the territory in which this company has its lines. There is no evidence as to any territory in Sacramento County north of the southerly boundary of the City of Sacramento. I recommend that the application be granted as to all of Sacramento County lying southerly of an east and west line running immediately south of the City of Sacramento and that it be denied, without prejudice, as to the remaining portion of the county.

As to San Joaquin County, applicant asks for this Commission's certificate for the entire county north of the right of way of the Southern Pacific Company, extending from a point east of Bixler through Stockton and Burnham to the easterly boundary line of the county, except the City of Stockton and the City of Lodi, which has its own municipal distributing plant. The Pacific Gas & Electric Company at present serves what is known as the Island Country, lying in the northwestern portion of the county, and also some territory in the vicinity of Woodbridge, lying northwest of Lodi. The Western States Gas and Electric Company serves Lodi and adjacent territory, particularly to the north and east of the city. Several witnesses testified that the Island Country is at present being adequately served at reasonable rates by the Pacific Gas & Electric Company and that there is no complaint concerning this territory and no need for a new utility supplying electrical energy. With reference to the territory supplied by the Western States Gas and Electric Company, the evidence shows that this company has until the beginning of this year been remiss in its duty to the public but that under the new management it is adopting an active, energetic

policy with reference to certain of the territory in the neighborhood of Lodi. The company has reduced its rates for power in this territory, has supplied all persons who have asked for electrical energy and has, at its own expense, built the necessary extensions. What I have just said applies particularly to the territory lying east of a north and south line running through the west boundary of the Town of Lodi to the easterly boundary of the Town of Lockeford, and included between two parallel east and west lines of which the one runs one mile south from Lodi and the other four miles north thereof. This district does not include the district from Lockeford east to Clements, in which district there is considerable demand for power which has not been met by the Western States Gas and Electric Company. This company, however, is now constructing a line east from Lockeford to Clements. In view of the steps which the Western States Gas and Electric Company is taking with reference to the rectangular territory which I have heretofore described, I recommend that the application be denied, without prejudice, as to that territory and also as to the Island territory, which will be more particularly described in the order. As to the remaining portions of that portion of the county which is covered by the application, there is considerable evidence that there are great opportunities in this county for the development of intensive cultivation and a considerable present demand for power. I accordingly recommend that the application be granted as prayed for, except as to the Island country and the territory adjacent to Lodi as hereinbefore described, as to which two districts the application should be denied, without prejudice.

As to Calaveras County, applicant asks for this Commission's certificate for the territory lying immediately east of the westerly boundary line to the Town of Camanche, where Oro Water, Light and Power Company has dredging properties which it desires to develop. There is some evidence as to need for additional power in this territory, and I recommend that the application be granted.

Whereever in the foregoing portions of this opinion I find that the application should be granted I find, as a fact,

that the public convenience and necessity require and will require the construction as prayed for, but only on the express conditions precedent hereinafter and in the order outlined. There may well be a demand for power in a certain locality: but the public convenience and necessity is not necessarily dependant upon any given utility to supply the need. Unless reasonable assurance is given that an applicant's fixed charges as well as its operating expense will not be excessive and that the moneys derived from the sale of its securities go into the property and not into the hands of promoters or outside parties and that the utility will be honestly and prudently managed, it may become this Commission's duty to deny the application and thereafter to grant its permission to some other utility which can and does measure up to the state's express public policy in these respects. This brings me to a consideration of applicant's financial condition.

The authorized capital stock of Oro Electric Corporation is 100,000 shares having the par value of \$100 each, making a total of \$10,000,000, of which \$6,500,000 is common and \$3,500,000 preferred. At or about the time of its incorporation this entire capital stock was issued. As testified to by President J. W. Goodwin, this stock was issued for the property in Humbug Valley, for which a price somewhat in excess of \$500,000 was paid, and for the stock of the Oro Water, Light and Power Company, which had a selling value of about \$3,500,000.

The total authorized bond issue is \$10,000,000. The first draft of the proposed Public Utilities Act was prepared in October, 1911, and copies were sent out during the early part of November, 1911, to the leading public service corporation lawyers of the state for examination and suggestions. Public hearings were held and largely attended in the early part of November. The bill was introduced in both houses of the Legislature a few days before the end of November, 1911. As testified to frankly by President Goodwin, it was considered desirable by his corporation to issue the bonds before the Public Utilities Act should become effective and the attorneys of his corporation accordingly devised a method by which the entire

issue should be disposed of before the effective date of the Act. The corporation accordingly proceeded under the plan so devised to issue its bonds as follows: \$6,050,000 thereof were issued through Goodwin & Holton as intermediaries to the Oro Development Company, a construction company which was incorporated on November 23, 1911 for the purpose of constructing the Oro Electric Corporation's plant and system. The stockholders of the Oro Development Company were the same as the stockholders of the Oro Electric Corporation and each stockholder held the same proportion of stock in each of the two corporations. The \$6,050,000 of bonds were issued to the Development Company for its agreement to build the plant and system and the entire consideration was paid before the Development Company did any work whatsoever. An additional \$2,450,000 of bonds were delivered by the Oro Electric Corporation to the Oro Water, Light and Power Company, which was controlled by the same persons, in return for the latter company's guarantee that the principal and interest of the Oro Electric Corporation's bonds would be paid. The remaining \$1,500,000 of bonds were issued to Oro Water, Light and Power Company in return for two certain dam sites which had been leased on November 1st, 1911, by Oro Water, Light and Power Company to Oro Electric Corporation, with an option to purchase them. In this way all of the authorized bonds of the corporation were issued early in December before the Public Utilities Act finally passed. As the bonds bear interest at 6 per cent, the issuing corporation thus obligated itself to pay \$600,000 in interest each year on its bond issue before the commencement by the Development Company of the construction of the plant. The Oro Development Company and the Oro Water, Light and Power Company accordingly agreed that they would waive their right to collect this interest on at least a portion of the bonds until a portion of the plant had actually been constructed. On May 8th, 1912, Oro Water, Light and Power Company, and Oro Development Company, which two companies together then held \$9,500,000 of applicant's bonds--\$500,000 of bonds having in the meantime been sold to the public--

entered into an agreement and declaration of trust under which the Oro Development Company deposited with the First Federal Trust Company of San Francisco \$5,050,000 of said bonds and the Oro Water, Light and Power Company deposited \$3,450,000 of said bonds for the purpose of securing the payment of principal and interest on the \$500,000 of bonds which had been sold and on \$3,000,000 additional bonds which the Oro Development Company withheld for sale to the public. The bonds so deposited are to be issued only as the work progresses, but the \$3,000,000 of bonds held by the Oro Development Company and intended to be sold to the public, are not subject to the agreement. The agreement provides that no interest shall be paid upon the bonds in possession of the trustee until interest in full has been paid upon the 3500 bonds sold and proposed to be sold, but the Oro Development Company and the Oro Water, Light and Power Company have, of course, the legal right to collect the interest on the bonds which they hold unless they have for sufficient consideration waived that right, and there is nothing in the agreement to prevent the payment of interest to them on their bonds after interest has been paid on the bonds outstanding in the hands of the public.

Without pausing to comment on the length to which the Oro Electric Corporation went on the advice of counsel to issue this \$10,000,000 of bonds before the Public Utilities Act should become effective, I would draw attention simply to the fact that the Oro Electric Corporation issued \$6,050,000 of its bonds to itself in the form of a construction company in return for the simple agreement to construct its plant and system, and that it issued \$2,450,000 of bonds to itself in the form of the Oro Water, Light and Power Company in return for its guarantee of its own bonds. I would draw attention further to the fact that on the bonds as outstanding interest payments of \$600,000 per year can legally be enforced unless the holders of the bonds have for adequate consideration waived the payment of the interest. The rate paying public has no assurance as matters now stand that the money derived from the sale of the bonds will go into the property and that the interest payments will be held down to a

reasonable amount. Unless such assurance is given, this Commission has no means of knowing whether or not applicant will be able to furnish its service for the rates which it has specified and whether accordingly the public convenience and necessity of the territory through which applicant's lines are to run require or will require the granting of its application.

It should be plainly stated that in taking this position, this Commission disavows any intention to try by indirection to exercise control over any securities lawfully issued prior to the effective date of the Public Utilities Act. It is merely announced as a principle, that when the facts in any particular case show that the utility seeking to enter a territory is so situated financially that there is strong likelihood that it will be unable to render adequate service at reasonable rates, regardless of its desire to do so, its application for a certificate of public convenience and necessity will be denied if there is no way of improving its financial condition; or, if a way is open to it so to change its financial status as to insure its ability to render adequate service at reasonable rates, its application may then be granted, but solely contingent upon its satisfying the requirements of the Commission, ^{as to financial condition,} because otherwise the public convenience and necessity would not be subserved by the grant of the application. I find that it will be necessary for the applicant herein to take the steps hereinafter indicated before it can place itself in such a position that this Commission can find that the present or future public convenience or necessity require or will require the granting of its application in whole or in any part. If the utility does not take such steps the public convenience and necessity not only will not be served by the applicant's proposed construction work, but on the contrary, inevitably will be injured thereby.

I accordingly find as a fact, that the public convenience and necessity do not and will not require the granting of the application except upon the following express condition precedent:

Applicant shall file with this Commission a written agreement between Oro Electric Corporation, Oro Development Company and Oro Water, Light and Power Company, duly authorized by the board of

directors of each of said respective companies, and in form satisfactory to this Commission, providing that no bond of Oro Electric Corporation which was on June 27, 1912, held or owned by Oro Water, Light and Power Company or Oro Development Company, whether on deposit with the First Federal Trust Company or otherwise, shall henceforth be transferred, mortgaged, pledged or otherwise disposed of, unless application shall first have been made by the owner thereof to this Commission in the form and manner prescribed by Section 52 of the Public Utilities Act and by the Rules of Practice and Procedure of this Commission in the case of issues of bonds by public utilities, and unless this Commission shall first have made its order authorizing the transfer, mortgage, pledge or other disposition of said bond under such conditions and terms as the Commission may prescribe. Also providing, for adequate consideration in said agreement expressed, that Oro Water, Light and Power Company and Oro Development Company, for themselves, their successors, assigns and transferees, expressly waive the right to claim or collect any interest on any of said bonds of Oro Electric Corporation without first having secured an order of this Commission giving its consent, which consent the Commission may refuse or grant, either conditionally or unconditionally, and also providing that in case of breach by any party to said agreement of any provision thereof, the Commission shall have the right without further proceeding to revoke this order and each and every portion thereof.

Applicant has not as yet made application for franchises to any of the counties or incorporated cities or towns through which it desires to construct its transmission or distribution lines. As this Commission has heretofore held in the case of Pacific Gas & Electric Company vs Great Western Power Company, supra, it will not, except under the most unusual circumstances, make an order under section 50-c of the Public Utilities Act unless applicant shall at the time of such order have applied in good faith to the public authorities from which it is necessary to secure said franchise or permit.. In this

case, however, applicant's application was filed with this Commission before the Commission announced its policy in this regard.

I accordingly recommend, that because of this fact, the Commission make its order on this application to the effect that it will hereafter upon application, under such rules and regulations as it may prescribe, issue the desired certificate, upon such terms and conditions as it may designate, after the public utility has obtained the contemplated franchise or permit, said order to be conditioned upon the compliance by applicant with the express conditions precedent hereinbefore set out with reference to its financial affairs. I submit herewith the following form of order.

O R D E R.

Oro Electric Corporation having heretofore filed with this Commission its application for a certificate under section 50 (a) of the Public Utilities Act that the present and future public convenience and necessity require and will require the construction of a reservoir and power plant with the necessary conduits and appurtenances in the county of Plumas and of transmission and distribution lines for electric service in the counties of Plumas, Butte, Yuba, Sutter, Colusa, Glenn, Yolo, Solano, Contra Costa, Alameda, San Joaquin, Sacramento and Calaveras, and for a preliminary order under Section 50 (c) of said Act declaring that this Commission will hereafter, upon application therefor, after said corporation has obtained franchises and permits it contemplates securing, but which have not as yet been granted to it, issue the necessary certificate or certificates that the present or future public convenience and necessity require or will require the exercise of the rights and privileges granted by said contemplated franchises and permits to construct, maintain and operate transmission and distribution lines and equipment in said counties, and Pacific Gas and Electric Company, Western States Gas and Electric Company, Northern California Power Company, Consolidated, and Vacaville Water and Light Company having asked for and been granted permission to protest against the granting of said application, and notice of the hearing of said application having been published as required by this Commission, and a public hearing having been held on said application;

THE COMMISSION HEREBY FINDS AS A FACT that if applicant shall have complied with the conditions precedent hereinafter in this order specified, but not otherwise, the present and future public convenience and necessity require and will require -

(a) the granting of the application of Oro Electric Corporation, under the provisions of Section 50 (a) of the Public Utilities Act, as to the construction of its reservoir

and power plant with the necessary conduits and appurtenances in the county of Plumas, and of transmission and distribution lines for electric service in the following territory:

- (1) All of Butte County except the cities and towns of Chico, Biggs and Gridley and those portions of the county which are at present being served by applicant;
- (2) All of Yuba County except the City of Marysville;
- (3) All of Sutter County;
- (4) All of Colusa County except the cities and towns of Colusa, Princeton, Maxwell, Williams and Arbuckle;
- (5) All of the southerly half of Glenn County except the town of Willows;
- (6) All of Yolo County except the town of Woodland as to which the application is held in abeyance;
- (7) All of Solano County except the cities or towns of Vacaville, Dixon, Fairfield, Suisun, Vallejo and Benicia and a district having a radius of two miles outside the town of Vacaville;
- (8) All of Contra Costa County lying east of a north and south line running immediately east of the city of Martinez except the city of Antioch;
- (9) All of Sacramento County lying southerly of an east and west line running immediately south of the city of Sacramento;
- (10) All of San Joaquin County north of the right-of-way of the Southern Pacific Company extending from a point east of Bixler through Stockton and Burnham to the easterly boundary line of the county except the city of Stockton, the rectangular district surrounding Lodi as hereinafter more particularly described and the Island territory as hereinafter more particularly described; and
- (11) That portion of Calaveras County which lies between

the westerly boundary line of the county and the town of Camanche; and,

(b) the granting of the application of Oro Electric Corporation under the provisions of Section 50 (c) of the Public Utilities Act, referring to the approval of franchises as hereinafter in this order specified; and,

THE COMMISSION HEREBY FINDS AS A FACT that the applicant has failed to make out its case as to the remaining territory specified in its application; and,

Basing its conclusions on the foregoing findings of fact and on the further findings and statements specified in the opinion which precedes this order,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Subject to the express conditions precedent hereinafter specified, the application of Oro Electric Corporation for a certificate under the provisions of Section 50 (a) of the Public Utilities Act, that the present or future public convenience and necessity require or will require the construction specified in its application is hereby granted as to the construction of its reservoir and power plant with the necessary conduits and appurtenances in the county of Plumas and of transmission and distribution lines for electric service in the following territory:

(1) All of Butte County except the cities and towns of Chico, Biggs and Gridley and those portions of the county which are at present being served by applicant;

(2) All of Yuba County except the City of Marysville;

(3) All of Sutter County;

(4) All of Colusa County except the cities and towns of Colusa, Princeton, Maxwell, Williams and Arbuckle;

(5) All of the southerly half of Glenn County except the town of Willows;

(6) All of Yolo County except the town of Woodland as to which the application is held in abeyance.

(7) All of Solano County except the cities and towns of Vacaville, Dixon, Fairfield, Suisun, Vallejo and

Benicia and a district having a radius of two miles outside of the town of Vacaville.

(8) All of Contra Costa County lying east of a north and south line running immediately east of the City of Martinez except the City of Antioch;

(9) All of Sacramento County lying southerly of an east and west line running immediately south of the City of Sacramento;

(10) All of San Joaquin County lying north of the right-of way of the Southern Pacific Company extending from a point east of Bixler through Stockton and Burnham to the easterly boundary of the county except the City of Stockton; the Island Country, more particularly described as a strip of territory seven miles wide bordering on the westerly boundary line of the county and reaching from the northwest corner of the county down two-thirds of the distance on the westerly boundary; and a rectangular territory lying between north and south lines running through the westerly boundary of Lodi and the easterly boundary of Lockeford and east and west lines of which one runs one mile south of Lodi and the other four miles north of said city;

(11) That portion of Calaveras County which lies between the westerly boundary line of the county and the Town of Camanche.

2. The application of Oro Electric Corporation for such certificate is hereby denied, without prejudice as to a further application, as to the cities or towns of Colusa, Princeton, Maxwell, Williams, Arbuckle, College City and Willows; a district within a radius of two miles from Vacaville; that portion of Contra Costa County which lies west of a north and south line running immediately east of the City of Martinez; Alameda County; that portion of Sacramento County which lies north of an east and west line running immediately south of the City of Sacramento; that portion of San Joaquin County which is known as the Island Country, as hereinbefore described; and that rectangular portion of San Joaquin County which has hereinbefore been described as surrounding the City of Lodi.

3. The application of Oro Electric Corporation as to the Town of Woodland is held in abeyance, with permission to applicant

to appear again before the Commission at any time after three months from the date of this order.

4. Subject to the express conditions precedent herein-after specified, the application of Oro Electric Corporation, under the provisions of Section 50 (c) of the Public Utilities Act for an order declaring that this Commission will hereafter, upon application, issue a certificate that public convenience and necessity require or will require the exercise of rights or privileges under franchises or permits not now, but hereafter to be secured from the various counties and incorporated cities and towns covered by the application is hereby granted in so far as said rights or privileges are to be exercised in the territory covered by paragraph (1) of this order, and denied, without prejudice, as to the remaining portions of the territory covered by the application.

5. Each portion of this order in which applicant's prayer is granted in whole or in part is subject to the express condition precedent that applicant shall first have filed with this Commission a written agreement between Oro Electric Corporation, Oro Water, Light and Power Company and Oro Development Company, duly authorized by the board of directors of each of said corporations, and in form satisfactory to this Commission, providing that no bond of Oro Electric Corporation which was on June 27, 1912, held or owned by Oro Water, Light and Power Company or Oro Development Company, whether on deposit with the First Federal Trust Company or otherwise, shall henceforth be transferred, mortgaged, pledged or otherwise disposed of, unless application shall first have been made by the owner thereof to this Commission in the form and manner prescribed by Section 52 of the Public Utilities Act and by the Rules of Practice and Procedure of this Commission in the case of issues of bonds by public utilities and unless this Commission shall have made its order authorizing the transfer, mortgage, pledge or other disposition of said bond under such conditions and terms as the Commission may

prescribe; also providing, for adequate consideration in said agreement expressed, that Oro Water, Light and Power Company and Oro Development Company, for themselves, their successors, assigns and transferees, expressly waive the right to claim or collect any interest on any of said bonds of Oro Electric Corporation without having first secured an order of this Commission giving its consent, which consent said Commission may refuse or grant, either conditionally or unconditionally; and also providing that in case of breach by any party to said agreement of any provision thereof, the Commission shall have the right without further proceedings to revoke this order and each and every portion thereof.

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

Dated at San Francisco, California, this 3d day of July, 1912.

John M. Eickelman
H. B. Loveland
Max Theiler
Edwin O. Edgerton
Commissioners