

ORIGINAL

Decision No. 1243

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application :
of the STANDARD OIL COMPANY for : Application No. 954.
permission to issue stock and sell :
same to its stockholders at par. :

Pillsbury, Madison and Sutro,
for Applicant.

LOVELAND, Commissioner.

O P I N I O N

This application, as its title indicates, is made by the Standard Oil Company, of California, to issue 45,183 ⁹⁷⁷³³⁴/₉₈₃₅₈₃ shares of its common capital stock to be sold at par to its stockholders, the money derived from the sale of said stock to be used for the enlargement of its manufacturing plants, for its operation in drilling wells for oil, for payments for property purchased and lands leased, and for the purchase of crude oil.

The circumstances surrounding this application are very different from those usually found comprehended in an application for an issue of stock, and are explained as follows:-

The stock of applicant was quoted, at the time this application was heard, at about 277, yet applicant asks to sell the stock herein prayed for to its stockholders at par.

The question as to whether applicant is subject to the jurisdiction of this Commission has not been finally determined, and will not be so determined until a decision has been reached in what is known as the Pipe Line Case.

There is no question that a part of applicant's business is not public utility business. It may hereafter be decided that the pipe lines owned and operated by applicant are public utili-

ties, in which case, under the decision rendered by this Commission upon Application No. 311, which decision was followed by this Commission in its decision upon Application No. 428, the issue of stocks and bonds by applicant will be considered under the jurisdiction of the Commission.

In other words, applicant owns and operates a pipe line which, under a recent statute enacted by the Legislature, may be considered by the Commission as a public utility, and also conducts a general oil producing and selling business which is not a public utility.

Applicant asked for authority to issue a part of its capital stock to its stockholders at par, notwithstanding that such stock has a market value largely in excess of par.

Whether or not this Commission should authorize the stock of applicant to be issued and sold in this manner requires the consideration of two questions: first: the legality of the issue; second: the propriety or justness of permitting such issue and sale.

This Commission has held that a company doing both public utility and non-public utility business is under the jurisdiction of this Commission as to the issuance of stocks and bonds. Strictly speaking, if this be true, then stocks and bonds can only be issued by applicant for the purposes set out in Section 52 of the Public Utilities Act, to-wit:-

"acquisition of property, or for the construction, completion, extension or improvement of its facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations, or for the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the public utility not secured by or obtained from the issue of stocks or stock certificates, or bonds, notes or other evidences of indebtedness of such public utility, within five years next prior to the filing of an application with the commission for the required authorization" .

It will be noted that it is not provided in terms that

these purposes must be public utility purposes. In other words, apparently a company doing both utility and non-utility business can, under the above provision, use money for the above purposes not applied to its public utility business. But there is strong inference that these purposes were intended to be public utility purposes; otherwise, there would be little reason for the statute setting them out.

It would seem that there is no restriction upon the discretion of the Commission in permitting the issuance of stock for either more or less than par; nor is there anything in the law to prevent the Commission from authorizing the sale of stock for less than its market value.

While it seems, further, that as a matter of law this Commission cannot permit the issuance of stock by a public utility, the proceeds from the sale of which are to be used for purposes other than those above set out, yet, in the decision on Application No. 311, this Commission held to the contrary, and permitted the issuance of stock, notwithstanding that the proceeds from the sale of which were to be used for purposes other than those above set out. This decision was arrived at to obviate the difficulty that if a company operating both a utility and non-utility business was not permitted to issue stock for purposes other than those set out in the Public Utilities Act, it must either cease doing business or separate such businesses, the latter of which is not always practicable, as was held in that case.

If we follow the decision rendered upon Application No. 311, we can permit the issuance of this stock, notwithstanding the proceeds are to be used for other purposes than those set out in the Public Utilities Act, and if the above statement of law is correct, the Commission can permit the issuance of the stock for less than its market value.

This brings us to the consideration of the second ques-

tion: the matter of propriety or justness of the issue asked for. The Commission is not willing to declare at this time, as a matter of settled policy, that it will permit a strictly public utility corporation to issue and sell its stock to its stockholders at less than the market value. It may be, and has been argued to the Commission, that, in view of the fact that the stockholders own all of the property, they at least are not injured if they receive more stock at less than its value. But the Commission believes that it must look further and determine whether or not there is a public interest involved in the issuance of the stock of a public utility company.

The reason for this is obvious. It must be admitted that a public utility's ability to raise money when needed for extensions, additional service, improvements of service, etc., is a matter of importance to the public; at least that part of the public represented by the patrons of public utilities. And it must also be admitted that capital stock is a very important asset which may be sold to raise money for these purposes.

Obviously, then, to sell stock at less than its market value is to deprive the utility company by that much of an opportunity to raise money for the purposes above mentioned and to that extent the public is injured.

This reasoning would apply to a company doing both a utility and non-utility business if the results were the same. And a proper consideration of whether the results will be the same requires that each case must rest upon its own consideration.

In the case at bar, there is no doubt that the Standard Oil Company is and will be at all times amply able to finance that portion of its business which the Commission may declare public utility business, and it, therefore, seems to me that permission to issue the stock herein asked for may be permitted on the ground that, considering all of the circumstances surrounding this parti-

cular case, the granting of such permission can in no way injure the public. The granting of the permission asked for must not be construed by anyone as establishing a precedent.

As has been stated, the Commission may decide that a portion of applicant's business is public utility business and that the issue and disposal of stocks and bonds by applicant for any purpose is within the jurisdiction of the Commission, in which case the permission herein granted is justified, for the reason above set forth.

It may be added as a further reason for granting this application, that this has been the customary method of financing employed by applicant and that to insist upon a departure from such method at this time would be a matter of serious embarrassment to applicant.

If it shall be found later that the pipe line portion of applicant's business is not a public utility business, this decision can have done no harm.

It must be distinctly understood, however, that it is upon the statement of facts above set forth, which are peculiar to this application, that permission is granted to applicant to issue the stock as prayed for and that no principle is being established that public utilities can issue stock and sell same at less than market value. And we suggest to this applicant and to other corporations that have followed this procedure of disposing of new stock, that they do not rely upon the Commission's approval of this particular issue as in any wise a precedent which will be followed in other cases.

In the first case hereafter presented to the Commission where the Commission's jurisdiction is undoubted, the main question herein will be determined.

I recommend the following Order:-

ORDER

Application having been made to the Railroad Commission of the State of California by Standard Oil Company for an order authorizing the issue of 45,183 $\frac{977334}{983533}$ shares of its common capital stock, and a hearing having been duly held, and it appearing to the Commission that said application should be granted.

IT IS HEREBY ORDERED: That Standard Oil Company is hereby authorized to issue 45,183 $\frac{977334}{983533}$ shares of its common capital stock on the following terms and conditions and not otherwise:-

(1) Said stock shall be sold so as to net applicant not less than par.

(2) Said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of said common capital stock hereby authorized to be issued and on or before the 25th day of each month the company shall make a verified report to the Commission, in accordance with the Commission's General Order No. 24, stating the sale or disposition of such stock during the preceding month, the terms and conditions of such sale or other disposition, the moneys realized therefrom and the use and application of such moneys.

(3) The authority hereby given to issue such stock shall apply only to stock issued by said company on or before the first day of August, 1914.

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 30th day of January, 1914.

John W. Eschleman
H. D. Loveland
Edwin C. Edgerton