

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application :
of the MT. KONOCTI LIGHT AND POW- :
ER COMPANY, a corporation, for an :
Order vacating and setting aside :
a portion of an Order heretofore :
made authorizing the issuance of :
a certain promissory note of said :
corporation under the provisions :
of Section 52 of the Public Util- :
ities Act of the State of Califor- :
nia. :

Application No. 1120.

William S. McKnight, for Applicant.

LOVELAND, Commissioner.

O P I N I O N

In this application, applicant, the Mt. Konocti Light and Power Company, requests this Commission to annul, vacate and set aside a portion of a certain Order heretofore made by this Commission, to-wit: the Order made under Application No. 422, under which Order applicant was granted permission to issue two hundred shares of its capital stock, and also to issue a promissory note for \$5,000.00 due in two years, with interest at six per cent.

The permission to issue the promissory note for \$5,000.00 is the portion of the Order which applicant now asks to have annulled and set aside.

Applicant states, as its reason for asking to have this portion of said Order annulled and set aside, that, at the time said Order was issued, to-wit: May 9, 1913, the minimum fee made and provided by the Public Utilities Act, to be paid to the State upon the granting, by the Commission, of permission to issue bonds or notes, was \$250.00. That, after paying said \$250.00 to the Commission, applicant realized that said sum was 5% upon the amount of the note which it had asked permission to issue and,

considering the transaction as an expensive method of financing, determined not to, and did not, issue the note.

Thereafter, applicant took the matter of the return of the \$250.00 minimum fee, paid to the Commission, up with the Commission, but, as the matter had been reported and remittance made by the Commission to the State Treasurer, applicant was requested by the Commission to take the matter up with the State Board of Control to see if the Commission could be authorized to return the fee of \$250.00 to applicant.

Counsel for applicant stated at the hearing of this application that the procedure suggested by the Commission had been followed, but that the Board of Control found no justification for assuming jurisdiction in the matter and authorizing the return of the fee to applicant.

Counsel also stated at the hearing that, at the further suggestion of the Commission, the Attorney General of the State had been consulted and that applicant had finally concluded to ask the Commission to annul and set aside that portion of the Order granted under Application No. 422 authorizing the issuance of the note for \$5,000.00, and that thereafter applicant would endeavor to collect the fee from the State.

Under Section 57 of the Public Utilities Act, as amended, the minimum fee to be charged and collected for permission to issue securities is now \$25.00. I am of the opinion that applicant is justified, under all the circumstances of this case, in endeavoring to recover the \$250.00 paid for permission which applicant did not thereafter take advantage of, but the procedure which applicant must take to secure a refund of the fee is something which this Commission feels is beyond its jurisdiction.

The Order promulgated under Application No. 422,- being the application under which permission was given to applicant to issue the note for \$5,000.00,- contained the following clause:-

"The authority hereby given to apply only to such stock and to such note as may be issued prior to December 31, 1913".

It is apparent, therefore, that the permission given to applicant under this Order has expired by limitation and the Commission cannot annul, vacate or set aside an Order which is no longer in force and effect.

While sympathizing with applicant in what we believe to be its just endeavor to recover the \$250.00, no course seems open to the Commission but to dismiss this application, for the reasons set forth above, and I recommend that it be dismissed under the following Order:-

O R D E R

Mt. Konocti Light and Power Company, a corporation, having applied to this Commission for an Order vacating and setting aside a portion of an Order heretofore made authorizing the issuance of a certain promissory note;

And the Commission having found that the Order, a portion which applicant now desires set aside and annulled, is no longer in force and effect, having expired by the limitation as to time set forth in said Order;

IT IS HEREBY ORDERED: That the application of the Mt. Konocti Light and Power Company to have a portion of said Order set aside and annulled be and the same is hereby dismissed.

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 28th
day of May, 1914.

H. B. Ireland

Max Thelen

Edwin O. Egerton

Commissioners.