

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of  
INDIAN VALLEY ELECTRIC LIGHT AND  
POWER COMPANY for an Order Authorizing  
an Issue of Stock, Bonds and Promissory  
Notes.

Application No. 46.

O. C. Pratt for Applicant.

THELEN, Commissioner.

OPINION.

On September 3rd, 1912, applicant filed with this Commission its supplemental supplementary application asking for an order of this Commission authorizing it to issue certain shares of capital stock and certain bonds, to be secured by deed of trust or mortgage, as hereinafter specified in greater detail. Applicant heretofore on August 9, 1912, filed with this Commission its amended application, asking for an order permitting the issue of stock, bonds and promissory notes. In that matter the Commission on August 23, 1912, made its order authorizing applicant to issue its promissory note or notes, to be secured by first mortgage upon all of its property in the amount of \$65,228.00, or such portion thereof as may be necessary for the purposes in the order specified, said notes to bear interest at a rate not to exceed 7 per cent per annum. Reference is hereby made to the opinion and order on said amended application.

At the hearing on the supplemental supplementary application, E. O. Lindblom and Round Valley Water Company appeared and were given permission to file an answer to said supplemental supplementary application, in which answer they set forth that they are about to construct works for the generation of electrical energy

in the territory which applicant intends to serve. These parties did not object to the granting of the application of the Indian Valley Electric Light and Power Company, but desired merely to notify the Commission of their project, so that the Commission might take this matter into consideration. In reaching its decision on the present application, the Commission will not refuse authority to one utility to issue securities on the ground that another utility may thereafter enter the field and compete with the existing utility in such a manner as to injure its business and impair the value of its securities. The Commission will judge each application on its merits, but will not be foreclosed by the grant to one utility of the right to issue securities, from thereafter permitting another utility of like character to enter the same field in case the public convenience and necessity demand such action. As has been frequently said by this Commission, the Commission does not guarantee any stocks, bonds or other securities which it authorizes and no order of authorization can thereafter be used to prevent this Commission from taking such action as it may consider necessary in behalf of the public convenience and necessity as affecting either the utility which secures the authorization or any other utility. The Commission, consequently, will judge of the present application on its own merits, irrespective of possible subsequent competition.

Applicant now asks authority to issue stock and bonds in the amount and for the purposes which will hereinafter appear.

In the first place, applicant alleges that subsequent to March 25, 1912, O. O. Pratt sold to various persons out of his individual holdings of capital stock in the company, 6080 shares, which shares were transferred on the books of the company to the purchasers and for which cash in the amount of \$6080.00 was received by applicant. It appears from the evidence on the application and from investigations made into applicant's books by this Commission's auditor, that said sum of \$6080.00 has been spent by applicant for the acquisition of property and the construction, completion, extension

and improvement of applicant's facilities. Mr. Pratt sold this stock so that applicant might receive cash necessary to continue its development until it could present to this Commission a plan for financing. Mr. Pratt desires to retain his relative holding of stock in the company and applicant asks for authority to issue to him 6080 shares of stock in lieu of that which he sold from his original holdings. Ordinarily, this Commission would insist that the public utility itself make application to the Commission before stock is issued, specifying the purposes for which it is desired to use the proceeds, in the manner and form prescribed by the Public Utilities Act and by the Rules of Practice and Procedure of this Commission. In this case, however, being an emergency case, I am willing to recommend the grant of the application in so far as affects the 6080 shares of stock, particularly in view of the fact that the stock was sold at par and that the proceeds have gone into the plant.

Applicant further alleges that 13,625 shares of its capital stock have been subscribed for at par on the installment plan and that applicant has agreed to deliver certificates therefor to the respective subscribers when fully paid. These subscriptions were made between July 8, 1910 and December 27, 1911, and are fully set forth in the supplemental supplementary application on file in this proceeding. Applicant alleges that 4464.99 shares of the stock so subscribed for have been fully paid and that there now remain 9160.01<sup>shares</sup> to be paid for. Applicant asks authority to issue now 4464.99<sup>shares</sup> and ~~authority~~ to issue hereafter 9160.01 shares as and when final payments are made thereon. It developed at the hearing that the contracts for the subscriptions of the stock all provide that the number of shares of stock specified in the contracts shall be delivered upon payment of the entire subscription price and that none of the certificates specified in applicant's said list have been fully paid for, except a subscription for 75 shares made by O. Ellenhouse on August 25, 1910. In the other cases a partial payment has been made, amounting altogether to \$4464.99. As the contracts of subscription all provide that the shares

of stock shall be delivered when payment has been made, this Commission will not authorize the issue of any of the stock on any contract until the subscription has been fully paid. I recommend that applicant be authorized to issue the certificates of stock so subscribed when final payment is made on the respective subscriptions but not before, except in the case of the 75 shares fully paid up by G. Ellenhause, for which the certificate may issue now. The money derived on these subscriptions should be placed by applicant in a separate fund and should not be expended without the prior authorization of the Commission, specifying the precise purposes for which such moneys may be spent. Otherwise there will be no assurance that the moneys so secured from the sale of capital stock will be spent for purposes which are properly chargeable to capital account under the provisions of the Public Utilities Act.

Applicant further asks for authority to issue to R. A. Lang 779 shares of its capital stock, being a 10 per cent commission earned by said Lang on the sale of 7790 shares of applicant's capital stock. An examination of applicant's books by this Commission's auditor shows that applicant entered into a contract dated April 25, 1911, with R. A. Lang for the sale of 50,000 shares of applicant's capital stock under certain terms and conditions specified in the contract, on which shares Lang was to receive a payment in cash and a commission of 10 per cent in stock. It appears that Lang was unable to carry out the provisions of the agreement but that an oral arrangement was entered into by which Lang was to receive a commission <sup>of</sup> 10 per cent in stock on the moneys paid in on the stock which he sold. It appears that Lang secured contracts for the sale of 13,621 shares of applicant's stock at \$1.00 per share. On these contracts applicant has received \$8237.50 in cash. I recommend that applicant be authorized to issue to Lang 824 shares of its capital stock as his commission on the cash so received on stock for which he secured the subscriptions.

Applicant further asks authority to issue bonds in an

amount sufficient to secure the sum of \$65,228.00 for the purposes specified in this Commission's order in the proceeding entitled as above, made on August 25, 1912, these purposes being the acquisition of property and the construction, completion, extension and improvement of applicant's facilities in connection with its proposed development of 500 horse power at Seneca, and also for the discharge and lawful refunding of note of \$4000.00 held by International Banking Corporation and note of \$3000.00 held by Butte County Bank. At the original hearing in the above entitled proceeding, applicant stated that it desired to secure this money by making its promissory notes to be secured by a first mortgage on its property and the Commission accordingly made its order authorizing the execution of such notes in the amount which the Commission considered proper. Applicant now states that it desires an alternative authorization to issue bonds sufficient to raise said sum of \$65,228.00, these bonds to be secured by a deed of trust or mortgage of applicant's entire property. A copy of a proposed deed of trust or mortgage has been filed by applicant in this proceeding. Applicant is unable to state what amount it will be able to realize from the bonds if authorized, but states that it has no doubt of its ability to dispose of the same. This Commission has hitherto authorized no bonds at a figure less than 80. If applicant's bonds net 80, it will be necessary to issue bonds of the face value of \$81,535.00, so as to net the desired total of \$65,228.00.

Applicant has expended for its plant and equipment since 1907 the sum of \$32,968.42, together with approximately \$5,000 on Seneca ditch construction. In addition to this expenditure of cash, applicant has in return for issues of stock secured additional property, including an item of \$16,000 for its real estate at Greenville, and its water rights at Seneca, for which latter rights it spent \$5,000 in cash and 250,998 shares of its capital stock. It is impossible to state the value of applicant's water rights at Seneca. However, disregarding these water rights, it is apparent that applicant at

present has a property which is probably worth in excess of \$50,000 and that as the proceeds of the proposed bonds are to go into the plant, with the exception of the \$7000 to be used for the payment of notes, there will be a reasonable equity behind the bonds, assuming, of course, that the venture is intelligently handled, and is a success. I recommend, however, that the authority to issue bonds in the amount of \$81,535.00 be conditioned upon the prior execution of a trust deed or mortgage to a responsible trust company or bank and the filing of a certified copy thereof with this Commission. I recommend further, that applicant be not for the present permitted to issue any of these bonds until it shall have entered into arrangements for the sale of all of them. Applicant should bear clearly in mind that this bond authorization is an alternative to the authorization to issue notes and that either the bonds or the notes must be issued as a whole and that it is not possible under this authorization to issue partly notes and partly bonds.

I recommend that the application be granted as modified in the foregoing opinion and submit herewith the following form of order:

O R D E R.

INDIAN VALLEY ELECTRIC LIGHT AND POWER COMPANY having applied to this Commission for permission to issue a certain number of shares of capital stock, and also bonds, to be secured by a deed of trust or mortgage, the bond issue to be an alternative to the issue of promissory notes heretofore authorized by this Commission's order dated August 23, 1912, and a public hearing having been held upon said application, and it appearing to the Commission that the stock hereby authorized to be issued is to be issued for purposes which are properly capitalizable, under the provisions of Section 52 of the Public Utilities Act, and that the purposes for which the bonds are to be issued, if issued, are not in whole or in part reasonably chargeable to ~~income~~ operating expenses or income,

IT IS HEREBY ORDERED AS FOLLOWS:

1. INDIAN VALLEY ELECTRIC LIGHT AND POWER COMPANY is hereby authorized to issue 6080 shares of its capital stock at a par value of \$1.00 per share to O. C. PRATT in lieu of 6080 shares of applicant's capital stock heretofore owned by said Pratt and from the sale and transfer whereof to other parties, applicant has derived the sum of \$6080.00 in cash.

2. Indian Valley Electric Light and Power Company is hereby authorized to issue to O. Ellenhouse 75 shares of its capital stock of the value of \$1.00 each, and to the other persons who have subscribed for shares of its capital stock in accordance with the list of subscribers specified on page 5 of the supplemental supplementary application in this case, or to their assigns, by assignments of which certified copies shall first have been filed with this Commission, the number of shares of applicant's capital stock subscribed for by these persons respectively when they shall have paid to applicant the full subscription price on their contracts. The moneys derived by applicant from such subscriptions shall be placed by applicant in a bank, in a separate fund, and shall not be paid therefrom without the prior authorization of this Commission, specifying the purposes for which said moneys may be used.

3. Indian Valley Electric Light and Power Company is hereby authorized to issue 624 shares of its capital stock of the par value of \$1.00 per share to R. A. Lang, as full compensation on account of \$6237.50, which amount of money has been paid to applicant in cash on subscriptions of its capital stock secured by Lang under an agreement by which he was to be paid a commission of 10 per cent <sup>in stock</sup> on payments made on stock subscriptions secured by him.

4. Indian Valley Electric Light and Power Company is hereby authorized to issue \$81,575.00, face value of principal of bonds, bearing interest at the rate of 5 per cent per annum, payable semi-annually, under and in pursuance of the terms of a trust deed or mortgage to be executed by applicant upon all its property, subject to the following conditions and not otherwise, to-wit:

(a) Indian Valley Electric Light and Power Company shall sell said bonds hereby authorized so as to net the said company not less than 80 per cent of the par value of the principal thereof, besides interest accrued thereon.

(b) Indian Valley Electric Light and Power Company shall have no power to issue any of said bonds unless it shall first have executed to a responsible trust company or bank, a trust deed or mortgage to secure the payment of said bonds and in form satisfactory to this Commission, and until applicant shall have filed with this Commission a certified copy of such trust deed or mortgage and shall have secured from this Commission an order approving said trust deed or mortgage and specifically authorizing the issue of bonds thereunder

(c) The proceeds from the sale of said bonds shall be applied only to the purposes specified in paragraph 2 of the order of this Commission heretofore and on the 23rd day of August, 1912, made in the proceeding entitled as above, said purposes being partly for the acquisition of property and the construction, completion, extension and improvement of applicant's facilities, and partly for the discharge and lawful refunding of applicant's obligations, all as specified in said order, to which reference is hereby made.

(d) The authority to issue the bonds hereby authorized is given as an express alternative to the authority heretofore given by this Commission in its said order, dated August 23, 1912, to issue promissory notes in the amount of \$65,228.00. Applicant shall have the authority to issue its promissory notes in the amount of \$65,228. as specified in said order dated August 23, 1912, or the authority to issue said bonds as herein specified, for the same purposes. If applicant issues any notes, it shall <sup>have</sup> no authority to issue any bonds and if applicant issues bonds, it shall have no authority to issue notes. Before applicant issues either bonds or notes it shall file with this Commission its election in writing specifying whether it elects to issue the bonds or the notes.

(e) Applicant shall have no authority to issue any bonds hereby authorized unless and until it shall have disposed of the entire authorized issue on the terms herein authorized.

5. The authority hereby given is given on the express condition that Indian Valley Electric Light and Power Company shall



Keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale or disposition of the stock and bonds hereby authorized to be issued, and on or before the 25th day of each month, the applicant shall make verified reports to the Commission, stating the sale or sales or other disposition of said stock and bonds during the previous month, the terms and conditions of such sale or disposition, the moneys realized therefrom and the use and application of such moneys, all in accordance with the provisions of this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(6) The authority hereby given to issue such stock and bonds shall apply only to stock and bonds issued by applicant on or before the 30th day of June, 1913.

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 24th day of September, 1912.

H. D. Howard  
W. B. Gordon  
Max J. Miller  
Edwin O. Edgeston  
Commissioners.