

By

Decision No. _____

Decision No. 3773

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the matter of the Application of FONTANA POWER COMPANY for a certificate of public convenience and necessity, for permission to issue stock and bonds and to mortgage property to secure said bonds, and for permission to enter into a certain indenture of lease.

In the matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY, a corporation, to enter into a certain indenture of lease and to enter into a certain contract for the sale of power.

In the matter of the Application of RIALTO DOMESTIC WATER COMPANY, a corporation, to enter into a certain contract for the purchase of power.

Application No. 2245.

O'Melveny, Stephens and Millikin,
by S. MacNeil,
Leonard, Surr and Hellyer,
By Howard Surr and Robert M. Frick,
for Fontana Companies.

H. H. Trowbridge and Harry J. Bauer,
for Southern California Edison Company.

Leroy M. Edwards, for protestants.

EDGERTON, Commissioner.

O P I N I O N

This is an application of Fontana Power Company for a certificate that public convenience and necessity require the construction of an electrical power plant and system near the town of Rialto, in the southwestern portion of San Bernardino County.

The Company also asks for authority to execute a mortgage upon its properties and to issue thereunder \$350,000, face value of first mortgage six per cent bonds; to issue 100 shares of

stock of the par value of \$100 per share; and to lease its property to Southern California Edison Company for a term of thirty years.

Southern California Edison Company asks for authority to enter into the above mentioned lease and to enter into a certain contract for the sale of power.

Rialto Domestic Water Company asks for authority to enter into a contract for the purchase of power.

Fontana Power Company was organized under the laws of the State of California in April 1916 for the purpose of constructing and operating water works, electric works and power plants. The Company has an authorized capital stock issue of \$350,000, divided into 3,500 shares of common stock of the par value of \$100 per share. At the present time the company has no property and has issued five shares of stock to qualify its directors.

Fontana Power Company is closely associated with the real estate development known as the Fontana Lands. These lands are situated thirty-eight miles east of Los Angeles, seven miles west of San Bernardino and nine miles north of Riverside. They embrace approximately 18,000 acres, of which 14,000 acres are under agricultural development and approximately 12,000 are under irrigation, water being obtained by gravity from Lytle Creek and from wells in the bed of the stream and on the lands themselves.

The hydro-electric developments contemplated by Fontana Power Company are for the purpose of conserving the energy wasted by the irrigation waters flowing from Lytle Creek to the agricultural lands below and for the purpose of furnishing enterprises affiliated with the Fontana land project with cheap power for pumping purposes.

It is proposed to construct a power house having a capacity of about 1,800 kilowatts, a distance of 23,982 feet southeast of the present irrigation intake. From the irrigation

intake to the power house a pressure pipe line having a fall of approximately 663 feet will be constructed. This pipe line is to be of riveted steel 36 inches in diameter of varying thickness ranging from 9/64 to one-half inch according to head on a basis of a maximum flow of 50 cubic feet per second or 2,500 inches.

The cost of the hydro-electric plant is estimated by Mr. K. B. Miller of McMeen and Miller, engineers of Chicago, at \$348,458, and by Mr. F. C. Finkle, consulting engineer, of Los Angeles, at \$351,270.00. These estimates have been checked by the Commission's engineers and have been found to be reasonable as a working basis.

In order to finance the construction of its plant the company proposes to sell \$350,000 of first mortgage six per cent serial bonds at 90 per cent of face value. The difference between the amount to be received from the sale of these bonds and the cost of plant is to be made up by Fontana Union Water Company and Fontana Company. In addition, Fontana Power Company proposed to issue 100 shares of its stock of the par value of \$100 per share to Fontana Union Water Company and Fontana Company as part payment for a power house site, rights of way and rights to use certain waters of Lytle Creek, in San Bernardino County.

The transaction involving the transfer of these properties by Fontana Union Water Company and Fontana Company to Fontana Power Company will be covered by an agreement, under the terms of which Fontana Power Company will deliver the \$10,000, par value of stock, and will further covenant:

1. To pay to Fontana Union Water Company and Fontana Company the difference, if any, between the value of said \$10,000 of stock and the value of the properties so to be conveyed, as soon as the value of the said properties and the method of payment therefor can be agreed upon between the parties and approved by

the Railroad Commission.

2. To pay to Fontana Union Water Company and Fontana Company, pending the fixing of the value of the properties conveyed, all its profits from the business after meeting all necessary charges; and in case of sale, the proceeds remaining after paying its obligations.

This arrangement has been entered into because no definite value has at this time been fixed for the properties to be transferred to Fontana Power Company and request is made to issue \$10,000 of par value stock in the form of first payment.

Fontana Power Company has submitted a form of mortgage under which it intends to issue its bonds but has requested that approval be withheld pending changes in the instrument.

Upon completion of the power plant, Fontana Power Company proposes to lease it for a period of 30 years to Southern California Edison Company. A contract to this effect has been entered into which contains the following as its principal provisions:

Fontana Power Company agrees to begin construction on an 1,800 kilowatt hydro-electric plant and system on or before January 1, 1917, and to complete the plant within one year. The Fontana Power Company agrees further to pay all taxes; to provide for renewals and to defray any additional cost of operation due to inability to supply a given amount of water.

The Southern California Edison Company agrees to lease and operate the plant for the thirty year period; to operate it at full capacity twenty-four hours each day; to provide for all repairs; to pay the Fontana Power Company .5¢ per kilowatt hour for all energy produced by the plant over and above energy used by the Fontana Power Company or its consumers; and to pay a penalty of \$83 per day, or a proportionate sum, for unintentional failure to operate the plant and .5¢ per kilowatt hour of available

output in case of intentional failure.

The Southern California Edison Company further agrees to produce, transmit and distribute all energy which can be produced in the Fontana Power Company's plant and required by the Fontana Power Company for its use and the use of its customers for irrigation and agricultural purposes, rock crusher, packing house and canneries, in the district described in the contract and comprising in general the territory owned or controlled by the various Fontana water companies at the following rates:

For energy delivered at the power house, or at 11,000 volts, within 1,000 feet from the now existing distribution line of the Edison Company extending along the Lytle Creek Wash from the Edison Company's Lytle Creek plant to the limits of the territory of the Fontana Power Company, the rate shall be .3¢ per kilowatt hour for energy produced at the power plant. Where energy is distributed at other points by the Edison Company and measured on the secondary side of the transformers, the rate shall be .338¢ per kilowatt hour. In case the demand of the various consumers of the Fontana Power Company exceeds the available supply of the plant, the Edison Company agrees to supply energy from its system up to a maximum demand of 1,500 kilowatts at .92¢ for energy delivered at the plant, or within 1,000 feet of the existing distribution line, and at .965¢ per kilowatt hour for energy delivered at other points.

The Fontana Power Company will thereafter derive revenue from the sale of this power to the Southern California Edison Company at .5¢ per kilowatt hour of plant output delivered to it, and to corporations or persons served by Fontana Power Company at a rate which in our opinion must not be less than sufficient to net Fontana Power Company .5¢ per kilowatt hour for all energy generated and delivered to them.

At the hearing in the matter held in Los Angeles on August 9, 1916, Lytle Creek Water and Improvement Company appeared

to protest against the granting of this application. In brief its protest is as follows:

Lytle Creek Water and Improvement Company is the owner of an extended area of water bearing gravels and ground a little below the mouth of Lytle Creek canyon and in the Lytle Creek river bed. On these gravel bearing grounds the company has sunk wells and is pumping a large amount of water for the purpose of supplying domestic consumers and several thousand acres of citrus lands.

The Company claims that if the waters of Lytle Creek are diverted that they will be deprived of the water which would ordinarily sink into the ground and go into the storage basin underneath their wells. The company further states that if the Fontana Power companies proceed with this project and divert the waters of Lytle Creek as planned that they will immediately seek remedy in the courts.

The following parties entered protests similar to that of Lytle Creek Water and Improvement Company:

Mutual Water Company
Mt. Vernon Water Company
City of Rialto
Riverside Land Company
Citizens Land Company

In answer to these protests Fontana Power Company states that it is the intention to return the waters of Lytle Creek to the wash at a point below the power house. It states further that this will be a direct benefit to protestants as the water will be delivered closer to their wells, the result being that in dry years the storage basin will be replenished faster than if the waters were compelled to take their natural course through the gravels of the creek bed. Applicants claim that in wet years protestants will not be injured as the gravel bed from the intake down to their wells receives sufficient water over and

above the amount which will be diverted by the proposed pipe line.

Of course this Commission can not adjudicate the disputed rights to the use of this water. This is a matter for the courts; but as shown in the report of Mr. L. S. Ready, an assistant engineer of the Commission, if all the contentions of protestants are sustained by the courts still Fontana Power Company would have sufficient water power remaining from which to make earnings more than sufficient to carry the proposed bond issue.

Mr. K. B. Miller, engineer for Fontana Power Company, has submitted the following estimate of earnings for the completed plant:-

Gross Annual Income	\$55,266
Taxes	\$2,800
Administration	1,200
Total expenses	4,000
Net operating income	51,266
Bond interest	21,000
After deducting interest	30,266
Depreciation	9,000
Net Earnings	\$21,266

Mr. L. S. Ready, assistant engineer of the California Railroad Commission, has submitted estimates based on varying conditions and offers the following as most probable:

Operating revenue	\$49,250
Interest and expenses:	
Interest at 8% on \$350,000	\$28,000
Depreciation at 1 1/2%	5,250
Maintenance discharge pipes.	200
Inspection and testing	300
Administration	1,200
Taxes	2,800
Extraordinary	200
Total Expenses	37,950
	\$11,300

Fontana Power Company has worked out with Southern California Edison Company an advantageous arrangement. If its plans carry it will be enabled to obtain power at low cost, and will bring about the operation of its plant by the experienced management of the Southern California Edison Company.

Of course, it is understood that the jurisdiction of the Commission to regulate rates, service, etc., remains notwithstanding the execution of these contracts. Such order as may be issued at this time will be preliminary and subject to the subsequent approval by this Commission of Fontana Power Company's mortgage and deed of trust and its contract with Fontana Union Water Company and Fontana Company.

I believe this application should be granted, subject to certain conditions, and therefore recommend the following form of order:

O R D E R

Fontana Power Company having applied to this Commission for authority to issue stock and bonds, to secure mortgage of its property for a certificate that public convenience and necessity require the construction of a certain power plant, and for authority to enter into a certain contract with Southern California Edison Company, providing for the lease of its plant and the sale and purchase of power; and Southern California Edison Company having applied to this Commission for authority to lease the plant of Fontana Power Company and to purchase and sell electric power in accordance with said contract with Fontana Power Company, and a hearing having been held and this Commission being fully apprised in the premises, and it appearing that the public needs will be served by the granting of this application; it appearing further that the stock and bonds herein authorized to be issued are not in whole or in part reasonably chargeable to operating expenses or to income,-

IT IS HEREBY ORDERED that Fontana Power Company be granted authority, and it is hereby granted authority, to issue one hundred (100) shares of its capital stock of the par value of One Hundred Dollars (\$100) per share to Fontana Union Water Company and Fontana Company as part payment for a power house site, rights of way and rights to use certain waters of Lytle Creek, in San Bernardino County;

IT IS FURTHER ORDERED that Fontana Power Company be granted authority, and it is hereby granted authority, to issue Three hundred and fifty thousand dollars (\$350,000) of its first mortgage six per cent bonds; and,

IT IS FURTHER ORDERED that Fontana Power Company and Southern California Edison Company be granted authority, and they are hereby granted authority, to enter into a contract in the form of the copy of said contract filed with this Commission as Exhibit "I", under the terms of which Fontana Power Company shall lease its properties to Southern California Edison Company, and Southern California Edison Company and Fontana Power Company shall agree to buy and sell electric power from each other under the terms and on the conditions set forth in the said contract.

The authority herein given Fontana Power Company and Southern California Edison Company to enter into a contract for the lease of the properties of Fontana Power Company, and for the interchange of electric power, is given on the condition that the Railroad Commission reserves the right hereafter to issue such orders as it may find necessary, which may modify or affect the terms of the lease set forth in said contract, or the terms and conditions of the interchange of electric power as set forth in said contract.

The authority herein given to Fontana Power Company to issue its stocks and bonds is given on the following conditions and not otherwise:

(1) The bonds herein authorized to be issued shall be sold at not less than ninety (90) per cent of the face value, plus accrued interest thereon.

(2) The proceeds derived from the sale of said bonds shall be used for the construction of a power plant with necessary pipes, structures, power house, generators, water wheels, etc., as set forth in the estimate filed

in connection with this application, on pages 11 and 12 of Exhibit "G", in the total sum of \$348,458.

(3) The bonds herein authorized to be issued shall be sold only after this Commission has approved the mortgage and trust deed under which said bonds are to be issued.

(4) The difference between the amount received from the sale of the bonds herein authorized to be issued and the cost of the Fontana Power Company's plant to be made up by Fontana Union Water Company and Fontana Company.

(5) The authority herein granted to issue said bonds shall apply to such bonds as shall have been issued on or before June 30, 1917.

(6) The authority herein granted is conditioned upon the payment by the applicant of the fee prescribed under the terms of the Public Utilities Act.

IT IS FURTHER ORDERED that Fontana Power Company be granted authority to enter into a contract with Fontana Union Water Company and Fontana Company, under the terms of which Fontana Union Water Company and Fontana Company shall convey to Fontana Power Company, a power house site, rights of way and rights to use certain waters of Lytle Creek, in San Bernardino County, for the following consideration:

- (a) One hundred (100) shares of the capital stock of Fontana Power Company, to be issued and delivered to Fontana Union Water Company and Fontana Company, or their nominees, upon the execution and delivery by them of a proper conveyance or conveyances of said properties,
- (b) the covenant of Fontana Power Company to pay to Fontana Union Water Company and Fontana Company the difference between the value of said shares and the value of said properties and the method of payment therefor can be agreed upon between Fontana Union Water Company,

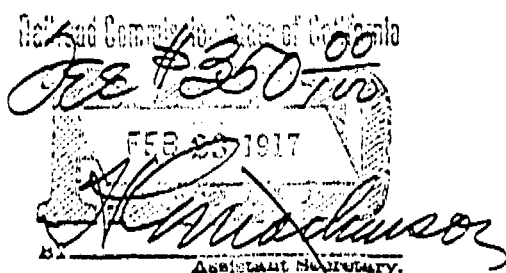
Fontana Company and Fontana Power Company and approved by the Railroad Commission, or in such other manner as may be required by law, and, (c) the further covenant of Fontana Power Company to pay to Fontana Union Water Company and Fontana Company, pending the fixing of the value of the properties conveyed, all its profits from the business after meeting all necessary charges; and in case of sale, the proceeds remaining after paying its obligations; provision to be made for the prior rights attaching to the ownership of stock of Fontana Power Company.

The authority to enter into said contract is conditioned upon the approval by the Railroad Commission of a copy of said contract to be hereafter filed by Fontana Power Company.

Fontana Power Company having applied to this Commission for a certificate that public convenience and necessity require the construction by it of a hydro-electric power plant, as set forth in the foregoing opinion, the Railroad Commission of California hereby declares that public convenience and necessity require the construction by Fontana Power Company of a hydro-electric power plant and system, as set forth in the foregoing opinion and in the order herein.

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 10th day of October, 1916.



Max Thelen
W. H. D. D. D.
Edwin C. Egan
Frank R. Dwyer
Commissioners