

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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ORIGINAL

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In the Matter of the Application of :
LIVERMORE WATER AND POWER COMPANY, :
a corporation, and W. A. BISSELL to :
sell, and PACIFIC GAS AND ELECTRIC :
COMPANY, a corporation, to purchase :
the property of Livermore Water and :
Power Company, and for an order author- :
izing the issue of certain stock of :
Pacific Gas and Electric Company. :
.....

Application No. 438.

H. D. Pillsbury for Livermore Water & Power Co.,
Charles P. Cutten for Pacific Gas & Electric Co.

BSHLEMAN, Commissioner.

O P I N I O N

This is an application on the part of the Pacific Gas and Electric Company to purchase all of the property of the Livermore Water and Power Company. The latter company serves electricity to the Towns of Livermore and Pleasanton and intervening territory in the County of Alameda, and water to the Town of Livermore.

Notice of the hearing was sent to the authorities of both of the Towns involved and was published in the Livermore Herald, published at Livermore, and the Pleasanton Times, published in Pleasanton, but no one appeared in opposition to the granting of the application, and I assume the Towns involved have no protest to offer.

The applicant, Livermore Water and Power Company, has an authorized issue of 2,000 shares of capital stock at a par value of \$100.00 per share, all of which stock is owned by W. A. Bissell except stock to qualify directors. There is an outstanding bond issue of \$100,000. The Company presents in its application an appraisal of \$359,804.12. In this appraisal appear items for:

Organization, franchises, etc.,.....	\$ 110,100.00
Cash.....	2,170.68
Bills receivable.....	5,468.89
Other miscellaneous assets.....	<u>467.25</u>

Making a total of..... \$ 118,206.82,

which while covering some items that may be properly chargeable to capital are, in my opinion, not justified in their entirety. Deducting from the full valuation given of \$359,804.18, the total amount of these items, leaves a difference of \$241,579.36.

Pacific Gas and Electric Company desires to pay for this property as follows:

1400 shares of the common stock of Pacific Gas and Electric Company @\$65.00 per share.....	\$ 91,000.00
Note for one year at 5%.....	51,000.00
Outstanding bond issue assumed.....	<u>100,000.00</u>
Total.....	\$ 242,000.00

At the hearing revised figures were presented showing an estimated value of \$62,425.00 for the property devoted to the electrical part of the business of the Company, and \$187,300.00 to the water business, making a total of \$249,725.00. A large portion of the valuation attributed to the water system consists of water rights, and the testimony shows that this Company has purchased practically all of the riparian lands and riparian water rights to the remaining lands on the Mocha Creek, and against these lands and riparian rights the engineer for applicant puts a value of \$25,000.00. In addition the Company owns the Positas Springs, which ownership carries with it a right to develop all of the water from a ranch of 377 acres, and it is testified that there is a possible development from this source of one million gallons of water per day. Against this property the engineer places a value of \$75,000.00. The remaining \$87,300 is the value of the reservoir and distributing system of the Livermore Water and Power Company. While at the present time only the Town of Livermore is supplied with water by this Company, the evidence shows that the Pacific Gas and Electric Company is securing a supply of good water/which will serve a much larger area by this purchase.

The net earning of the Livermore Water and Power Company for the calendar year of 1912 was \$2,788.55 after paying the interest on the \$100,000 of outstanding bonds.

The owner of these systems, Mr. W. A. Bissell, testified that he desired to dispose of the same because he finds it difficult to secure funds for the extensions and improvements which these growing communities demand. He secures all of his power from the Pacific Gas and Electric Company and charges a top rate for lighting of ten cents per K.W.H., and for power six cents per K.W.H. The charge for water is at the rate of twenty cents per thousand gallons with a minimum monthly rate of seventy-five cents per consumer. The Pacific Gas and Electric Company expresses its willingness, if the purchase is approved, to put in a top rate of eight cents for lighting and to make the necessary extensions and improvements in the territory. This Company likewise, through its representatives, states that there is no immediate intention of interfering with the present rate of twenty cents per thousand gallons charged for water, but it does not bind itself not to apply to increase such rate on the ground that the same is low as compared to other domestic rates around San Francisco Bay. I am not impressed with the suggestion that twenty cents per thousand gallons is a low rate for water, nor am I willing to take as a standard of comparison, without further evidence, the rates charged by the companies serving San Francisco, Oakland, Alameda and Berkeley. As a matter of fact, as was referred to at the hearing, engineers for water companies in San Diego testifying for the water companies themselves, have pointed out to this Commission that the rates for water around San Francisco Bay are among the highest in the state. We have every desire to treat the Pacific Gas and Electric Company fairly in any water rates over which we have any jurisdiction, but we do not look with favor upon a consolidation which shall serve to increase the rate for the commodity involved. Having in ~~mind~~ mind the usual method of developing water in the

various portions of the State for domestic purposes, I am impressed with the fact that the selling company here has in its control water which may be offered for sale at comparatively a low cost, and furthermore that the supply is considerably in excess of the needs of the community served. Such being the case, the proper procedure is for the agency in control of this water to take steps to dispose of more of it and thus increase its revenue rather than by adding to the burden of the present consumers. In fact, it has been specifically held by the Supreme Court of the United States that a company having a system constructed beyond the needs of its consumers may not charge the entire expense of maintaining such system upon such consumers (San Diego Land & Town Company vs. Jasper, 129 U.S.439), and the same may certainly be said of a company having in its control water beyond the needs of its present consumers. I understand the intention of the Pacific Gas and Electric Company, if this sale is consummated, is to extend the use of the water.

It appears very clearly that the granting of this application independent of the price paid, will be of advantage to the consumers, provided the water rate is not interfered with and the assertion of the Pacific Gas and Electric Company that it is not now contemplated that application be made to change the water rate coupled with the power of the trustees of the two municipalities involved to prevent increases unless they are justified, leads me to believe that no disadvantage will result to the consumers of water. But, as I have already said, we do not expect to have this consolidation used as a reason for increasing rates. If the utilities resort to such a practice thereby admitting that the larger utility which absorbs the smaller one, is not able after the process to do as well ~~xx~~ by its consumers as the smaller one was doing theretofore, it will be difficult to persuade this Commission in the future that the public interest requires or is served by such consolidation.

While I am not of the opinion that sufficient evidence is before the Commission to justify us in accepting the value set out herein for rate fixing purposes, still I ~~strongly~~ believe that taking

everything into consideration the amount to be paid for this property is ~~xxx~~ an amount which the Pacific Gas and Electric is justified in paying, but this brings me to a consideration of the most difficult question to be determined in the application.

The agreed price, as has already been set out, is \$242,000.00 made up of bonds, \$100,000.00, note \$51,000.00 and cash \$91,000.00. Against this cash the applicant desires to issue 1400 shares of its common stock, which would mean that these shares are to be sold at \$65.00 per share. This Commission has never heretofore authorized the sale of stock at less than \$80.00, and I do not believe it should be done here. The sale of stock of a utility such as the Pacific Gas and Electric Company at \$65.00 per share indicates, to my mind, that one of two conditions exists; either the utility is over-capitalized, or it has tied up in presently non-productive/^{property} such an amount of capital that the actively earning capital cannot produce an earning upon itself and this dormant capital sufficient to give the owners of such stock what they consider a reasonable earning. This Company urges that the second condition is the one that exists with reference to it, but I consider that the Commission is not justified in taking the stock-brokers and stock dealers estimate as a proper selling price for such stock. If the first condition suggested here exists, the amount of outstanding stock should be decreased. If the second condition exists and the stock is actually worth/^{more than its market value,} then the public will be required to pay upon such value an amount beyond the price at which the stock can be purchased in the market. In this very case Mr. Bissell in taking 1400 shares of this stock will be given 5%, under the present dividend practice of the Pacific Gas and Electric Company, on \$140,000 and not on \$91,000, and the public will be required to furnish in rates money to earn 5%, or any reasonable dividend beyond that amount on \$140,000. We are very much in favor of utilities realizing a part of their funds from stock sales. An ideal healthy utility, it seems to me, is one that has borrowed not

beyond 75% of the value of its property and is paying thereon as bond interest 5%, and has secured the remaining 25% from sales of stock at par. Under such conditions if the Commission should allow, as it did in the Palo Alto Gas Case, 8% on the entire value of the property, and the property was valued at say \$100,000, then there would be a net earning of \$8,000 per year, \$3,750 of which would go to the amply secured bondholders, leaving \$4,250 annually to be paid on the \$25,000 outstanding stock, which seems to me would be a pretty good dividend for the man who actually put his money in and took the risk. The trouble too often, however, is that to get this 25%, or a very much less amount, \$100,000 or \$200,000 of stock is issued against which the utility desires to earn. It is difficult for me to understand how many of the stockholders of many of the public utilities in this State have risked very much when they have only put the bondholders' money in the property and have gotten stock for little or nothing. The suggestion I have thrown out, seems to me to be not only reasonable but very advisable from the view point of the investor, and the fact that the stockholder under such circumstances earns a large rate of interest is not and should not be any of the business of the public. What the public has a right to look to is the property which is being devoted to its service, and if 8% is a reasonable amount for such property to earn, or any other greater or less per cent, the public is not interested in the division thereof. The fact, however, that the Supreme Court has held that the amount of outstanding stocks and bonds shall be considered by a commission, such as this, in fixing rates drives us to the position which we here assume, and we will not authorize the sale of stock at as low a figure as is here suggested.

While I do not desire to resort to a subterfuge, I do not believe under the circumstances of this case, that it is necessary

to prevent the consummation of this scheme, which from every other point of view is of advantage to the public, by reason of the stock transaction suggested. Admittedly the price being paid is an estimate, and I am not at all blind to the fact that the right to serve this territory is considered by the Pacific Gas and Electric Company as valuable to it, a value, however, which it cannot capitalize and from which it can reap no benefit other than that benefit which comes to it by finding an enlarged market for its power, and the further fact that if it adequately and sufficiently serves the public in the way that the public is entitled to be served it may reasonably expect to hold this as an exclusive field. Under all these circumstances and the specific understanding that the estimated value of this property here involved is not to be taken by this Commission for rate fixing purposes, I am willing that the Company may assume the bonded indebtedness, execute the note of \$51,000 and give in addition 1400 shares of its capital stock for this property, but when rate fixing inquiries come around any shrinkage from this value will have to be taken from the \$51,000 which the company is paying by a short term note, and practically as cash, and not from the stock. In other words, as applies to this purchase price, whenever the public interest is concerned, this Commission desires to have it specifically understood that it will estimate at least \$20.00 as having been received from each share of this stock, and we do not bind ourselves even to as low a figure as that. The \$51,000 which is not evidenced by stock or outstanding bonded indebtedness is what will be required to be written off if the Commission finds an excessive amount has been paid for this property, and written off from the legitimate surplus of the Pacific Gas and Electric Company. I have taken this method of solving the problem because I desire to recommend the granting of this application believing that it will be to the interest of the public, but a much greater injury to the public would result, in my opinion, from establishing a precedent that stock may

sell at \$65.00 a share, than the public would lose by the failure to grant this application.

I submit the following order:

O R D E R .

LIVERMORE WATER AND POWER COMPANY having applied to sell and Pacific Gas and Electric Company having applied to buy all the property of the Livermore Water and Power Company situated in the County of Alameda, State of California, and consisting of an electrical distribution system with necessary appurtenances in the Town of Livermore and Town of Pleasanton and territory intervening between said two Towns, and a water system consisting of the Positas Springs property and the Mocha Creek property in the County of Alameda, together with pipe lines from such sources of supply to the reservoir of said Livermore Water and Power Company in the Town of Livermore, and a water distribution system in said Town of Livermore, together with all appurtenances and real estate of whatsoever nature owned by said Livermore Water and Power Company, and all franchises owned by said Livermore Water and Power Company in the County of Alameda, and the Towns of Livermore and Pleasanton, the same being referred to in that certain contract entered into between the Livermore Water and Power Company and the Pacific Gas and Electric Company on the 27th day of November, 1912, and attached to the application herein and marked "Exhibit A";

And a hearing having been held and being fully apprised in the premises,

THE COMMISSION FINDS AS A FACT that the public convenience and necessity will be served by the granting of the said application of the Livermore Water and Power Company to sell and the Pacific Gas and Electric Company to purchase the above mentioned property on the terms set out in the agreement heretofore referred to, except as to the price at which the 1400 shares of common stock of the Pacific Gas and Electric Company is to be sold to the Livermore Water and Power

Company, and the Pacific Gas and Electric Company is authorized to pay for said property on the following terms:

By assuming \$100,000 of outstanding bonded indebtedness of the Livermore Water and Power Company; by giving its promissory note for \$51,000 for one year, interest at 5% per annum; and by issuing to said Livermore Water and Power Company 1400 shares of the common stock of said Pacific Gas and Electric Company.

Basing its order on the foregoing finding of fact and the findings of fact set out in the opinion hereto,

IT IS HEREBY ORDERED:

1. That the Livermore Water and Power Company is permitted to sell and the Pacific Gas and Electric Company is permitted to buy all of the property of said Livermore Water and Power Company owned by said Company in the County of Alameda.

2. In consideration of the sale by the Livermore Water and Power Company to Pacific Gas and Electric Company, Pacific Gas and Electric Company is permitted to assume all of the outstanding bonded indebtedness of the Livermore Water and Power Company, amounting to \$100,000, bearing interest at 6% per annum; to issue and deliver to said Livermore Water and Power Company its promissory note payable one year from date hereof for \$51,000, interest at ^{and} 5% per annum; to issue and deliver to the Livermore Water and Power Company 1400 shares of the common stock of the Pacific Gas and Electric Company.

The permission to do all of these things and each thereof is contingent upon the following conditions:

1. Neither this Commission nor any other public authority shall be bound by the value of the property set out in the contract between Livermore Water and Power Company and Pacific Gas and Electric Company, heretofore referred to, or the value of said property as given in the testimony as the basis for the sale here under consideration.

2. In any proceeding before this Commission or any other public authority wherein the rates or service of the Pacific Gas and Electric Company are involved, the price secured by said Pacific Gas and Electric Company for the 1400 shares of its common stock herein authorized to be issued and delivered, shall be considered at not less than \$20.00 per share; and if in any such proceeding it be found that the value of the property urged by the applicants herein as the basis for this sale and purchase, is excessive, any such excess shall be disposed of from the capital account of said Pacific Gas and Electric Company by writing off from said capital account such amount so found from the \$51,000 herein authorized to be paid, through the note herein approved, up to the total amount thereof.

3. Neither this purchase nor anything involved in this proceeding shall be made the basis by Pacific Gas and Electric Company for, nor used as an excuse to increase any rates either for power or water within the territory now served by the Livermore Water and Power Company, and this order is made in full contemplation of the fact that the Pacific Gas and Electric Company has expressed its willingness to lower the rates and improve the service for electricity within the territory involved, and has no immediate intention of asking for an increase of the water rates involved.

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 April, 1913.

John M. Fashleman
H. D. Loveland
Miss Helen

Commissioners.