Decision No. 616

ORIGINAL

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of ORO ELECTRIC CORPORATION for a certificate that public convenience and necessity require and will require the exercise by it of rights and privileges under franchises granted to it by the city of Stockton, by Ordinance No.566, approved December 30, 1912, and by the county of San Joaquin, by Ordinance No.339, passed January 7, 1913, (other than the territory as to which said corporation was granted a certificate of public convenience and necessity by order of the Railroad Commission dated July 3, 1912, as modified by its order dated October 8, 1912.)

Application No.347.

Goodfellow, Eells & Orrick, C. L. Neumiller and Samuel Knight for Oro Electric Corporation.
Chickering & Gregory, Frederic W. Stearns and Nutter & Orr for Western States Gas & Electric Co.

ESHLEMAN and THELEN, Commissioners.

O P I N I O N.

This is an application by the Oro Electric Corporation for a certificate of public convenience and necessity, under the provisions of Section 50 of the Public Utilities Act, authorizing the exercise by said corporation of rights and privileges under two certain franchises heretofore granted to it, namely, a franchise granted by the city of Stockton by Ordinance No.566, approved December 30, 1912, and a franchise granted to it by the county of San Joaquin by Ordinance No.339, passed January 7, 1913. At the time the application was filed, the applicant had applied to the Board of Supervisors of San Joaquin county for a county franchise, but the same had not as yet been secured. At the hearing, however, a certified copy of the ordinance granting this franchise was filed with the Commission, and the application will be regarded as asking for authority to exercise rights and privileges under said franchise. This Commission has heretofore granted to the applicant authority to construct its lines and to serve a portion of San Joaquin county outside the limits of incorporated cities and towns, as will hereinafter appear in greater detail.

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The Western States Gas and Electric Company, which is now serving the territory which the Oro Electric Corporation desires to enter, appeared at the hearing and filed its answer and protest. At the hearing both companies introduced voluminous evidence bearing on their respective contentions. This evidence covered every phase of the subject and has been carefully considered by this Commission and its experts before the Commission's conclusions on this application were reached.

Heretofore, on May 23, 1912, the Oro Electric Corporation (which will hereinafter be referred to as the Oro Corporation) applied to this Commission, in Application No.64, for a certificate of public convenience and necessity for the construction of transmission and distribution lines for electric service in the counties of Plumas, Butte, Yuba, Sutter, Colusa, Yolo, Solano, Contra Costa, Alameda, Sacramento, San Joaquin and Calaveras. After the hearing of this case, at which the Pacific Gas and Electric Company, the Northern California Power Company, Consolidated, the Western States Gas and Electric Company and the Vacaville Water and Light Company appeared as protestants, this Commission on July 3, 1912, made its opinion and order in said application No.64, providing in part that, subject to the express conditions precedent specified in the order, the Oro Corporation should have the right to construct its reservoir and power plant, with the necessary conduits and appurtenances, in the county of Plumas and transmission and distribution lines for electric service in the following territory:

1. All of Butte county except the cities and towns of Chico, Biggs and Gridley, and those portions of the county which were already being served by the Oro Corporation;

2. All of Yolo county, except the city of Marysville;

3. All of Sutter county;

4. All of Colusa county, except the cities and towns of Colusa, Princeton, Maxwell, Williams and Arbuckle;

5. All of the southerly half of Glenn county, except the

town of Willows;

6. All of Yolo county, except the town of Woodland, as to which the application was held in abeyance.

7. All of Solano county, except the cities and towns of Vacaville, Dixon, Fairfield, Suisun, Vallejo and Benicia, and a district having a radius of two miles outside of the town of Vacaville.

8. All of Contra Costa county lying east of a north and south line running immediately east of the city of Martinez, except the city of Antioch.

9. All of Sacramento county lying southerly of an east ~~xxxx~~ and west line running immediately south of the city of Sacramento.

10. All of San Joaquin county lying north of the right-of-way of the Atchison, Topeka and Santa Fe Railway Company, extending from a point east of Bixler, through Stockton and Burnham, to the easterly boundary of the county, except the city of Stockton, the Island country, more particularly described as a strip of territory seven miles wide, bordering on the westerly boundary line of the county and reaching from the northwest corner of the county down two thirds of the distance on the westerly boundary, and a rectangular territory lying between north and south lines running through the westerly boundary of Lodi and the easterly boundary of Lockeford, and east and west lines of which one runs one mile south of Lodi and the other four miles north of said city;

11. That portion of Calaveras county which lies between the westerly boundary line of the county and the town of Camanche.

Thereafter, on July 11, 1912, the Western States Gas and Electric Company (which will hereinafter be referred to as the Western States Company) applied for a rehearing of Application No. 64 "as to the district surrounding the city of Stockton at a constant distance of two miles from the municipal limits thereof." After a hearing of said application, this Commission, on October 8, 1912, made its opinion and order amending that portion of its order on

the previous application referring to San Joaquin county so as to give to the Oro Corporation the right to enter into and serve that portion of San Joaquin county which was designated as follows:

10. All of San Joaquin county lying north of the right-of-way of the Atchison, Topeka and Santa Fe Railway Company, extending from a point east of Bixler, through Stockton and Burnham, to the easterly boundary of the county, except

(a) The city of Stockton;

(b) A strip of territory at a constant distance of one mile from the city limits of the city of Stockton, and bounded on the northwest by the Lower Sacramento Road, on the north by the center line of Harrison street, extended westerly and easterly, on the east by the center line of Ash street, thence westerly along the center line of Copperopolis Road to the center line of C street, thence northerly along said center line of C street to said extension of the center line of Harrison street easterly, and on the south by the right-of-way of the Atchison, Topeka and Santa Fe Railway Company;

(c) The Island country, more particularly described as a strip of territory seven miles wide, bordering on the westerly boundary line of the county and reaching from the northwest corner of the county down two-thirds of the distance on the westerly boundary; and

(d) A rectangular territory lying between north and south lines running through the westerly boundary of Lodi and the easterly boundary of Lockeford, and east and west lines of which one runs one mile south of Lodi and the other four miles north of said city.

We shall now refer in somewhat greater detail to the two franchises under which the Oro Corporation asks authority to exercise rights and privileges.

Ordinance No.566 of the city of Stockton, approved on December 30, 1912, grants to the Oro Corporation, its successors and assigns, the right to construct, lay, maintain and operate under and along the streets, highways and public places of the city of

Stockton, both underground and over head distributing systems. The privilege was granted for a term of forty-nine years after the date of the final passage of the ordinance. The ordinance contains the usual provisions of the Broughton Act with reference to the payment to the city of Stockton of 2% of the gross annual receipts. Work under the franchise is to commence within not more than four months from the granting of the same. The ordinance contains detailed provisions with reference to the "underground district" in Stockton and with reference to the construction and maintenance of the grantee's distributing system.

Ordinance No.339, granted by the Board of Supervisors of San Joaquin county on January 7, 1913, gives to the Oro Corporation, its successors and assigns, the right to erect, operate and maintain towers, piers, poles and other superstructures, and to suspend, fix and hang thereon wires, cables and other appliances for transmitting and conducting electricity, and to lay, maintain and operate wires, cables and other appliances in conduits and such other methods as may be convenient and proper "through, over, along and under the said roads, highways, public ways, streets, lanes and public grounds and places of and in the said County of San Joaquin for conducting electricity for furnishing light, heat and power, and for all or any other purposes for which electricity can or may be used." The ordinance contains provisions with reference to the manner of construction and maintenance of the grantee's towers, piers, poles and other superstructures, specifies that the franchise shall run for the term of fifty years, contains the usual provisions with reference to the payment of a percentage of the gross annual receipts and provides that the work under the franchise shall be commenced in good faith within not more than four months from the time of granting the same.

To sum up the matter in a nutshell, Oro Corporation is asking permission to enter and serve the city of Stockton and certain territory in the county of San Joaquin, which city and territory are

now being served ~~by~~ with electric energy exclusively by the Western States Company.

The application in this case is made under the provisions of Section 50 of the Public Utilities Act, which reads as follows:

> "Sec.50. (a) No street railroad corporation, gas corporation, electrical corporation, telephone corporation or water corporation shall henceforth begin the construction of a street railroad, or of a line, plant or system, or of any extension of such street railroad, or line, plant or system, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction; provided, that this section shall not be construed to require any such corporation to secure such certificate for an extension within any city and county or city or town within which it shall have theretofore lawfully commenced operations, or for an extension into territory either within or without a city and county or city or town, contiguous to its street railroad, or line, plant or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business; and provided, further, that if any public utility, in constructing or extending its line, plant or system, shall interfere or be about to interfere with the operation of the line, plant or system of any other public utility, already constructed, the commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants or systems affected as to it may seem just and reasonable.
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> (b) No public utility of a class specified in subsection (a) hereof shall henceforth exercise any right or privilege under any franchise or permit hereafter granted, or under any franchise or permit heretofore granted but not heretofore actually exercised, or the exercise of which has been suspended for more than one year, without first having obtained from the commission a certificate that public convenience and necessity require the exercise of such right or privilege; provided, that when the commission shall find, after hearing, that a public utility has heretofore begun actual construction work and is prosecuting such work, in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not heretofore actually exercised, such public utility may proceed, under such rules and regulations as the commission may prescribe, to the completion of such work, and may, after such completion, exercise such right or privilege; and provided, further, that this section shall not be construed to validate any right or privilege now invalid or hereafter becoming invalid under any law of this state.
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> (c) Before any certificate may issue, under this section, a certified copy of its articles of incorporation or charter, if the applicant be a corporation, shall be filed in the office of the commission. Every applicant for a certificate shall file in the office of the commission such evidence as shall be required by the commission to show that such applicant has received the required consent, franchise or permit of the proper county, city and county, municipal or other public authority. The commission shall have the power, after hearing, to issue said certificate, as prayed for, or to refuse to issue the same, or to issue

it for the construction of a portion only of the contemplated street railroad, line, plant or system, or extension thereof, or for the partial exercise only of said right or privilege, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require. If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing, but which has not as yet been granted to it, such public utility may applyto the commission for an order preliminary to the issue of the certificate. The commission may thereupon make an order declaring that it will thereafter, upon application, under such rules and regulations as it may prescribe, issue the desired certificate, upon such terms and conditions as it may designate, after the public utility has obtained the contemplated franchise or permit. Upon the presentation to the commission of evidence satisfactory to it that such franchise or permit has been secured by such public utility, the commission shall thereupon issue such certificate."

This section represents a new state policy in the relationship between public utilities and the public. Heretofore, while the various counties and incorporated cities and towns have had the legal right to fix the rates of certain public utilities as a matter of fact, only a few of them have, except as to water companies, acted under the authority conferred by the Constitution and the statutes of this State. As a practical matter, most of the utilities have been permitted to go their own way, reaping as high profits as they could, but subject on the other hand to the possibility of having another utilityof a like character enter the field, subjecting them to more or less severe competition. On the one hand, the utilities were in most cases left unhampered to make profits as large as they could, while on the other they were subject to possible competition. The result of such competition was only too often an ultimate consolidation of the competing companies, after a period of more or less fierce competition, whereafter the consolidated utility claimed the right in the courts to receive from the public rates high enough to yield the company a return on all the property of the original competitors, including the property which had been duplicated and a large portion of which had been "junked." Regulation of these utilities in the interest of the public was largely sporadic and ineffective.

Under the new State policy, these conditions are radically different. In the first place, the Railroad Commission is given

the right to establish the rates of all utilities in territory over which the Commission has jurisdiction. The result will be, that while the utilities will be ~~kmft~~ allowed a just compensation on the value of their property used and useful for the public purpose, they can not continue to expect the public to pay to them rates high enough to yield unreasonably high returns on the property. As the right to the former high returns has, in effect, been taken away, it is only fair that the utilities shall receive a degree of protection from possible competition, in case they are doing their full duty, so that what they lose in the way of possible unreasonably high returns they shall, in a measure, gain in greater security to their investment. This principle, however, applies only to such utilities as are doing their full duty to the public. The protection to the investment of a utility which is doing its full duty to the public is demanded, not merely as a matter of fairness, but also as a matter of common sense. If the utilities are to be held down to a return which, while liberal, is not to be unreasonably high, and if, at the same time, the utilities are to continue to be subject to more or less fierce competition, people with money to invest will look to fields other than public utility enterprises for the investment of their funds. As the State of California is a young and growing state, with tremendous possibilities of development, and as it needs public utility enterprises to assist it in its growth, a wise public policy demands that utilities which are doing their full duty to the public shall be treated with fairness and justice and liberality, and that they shall receive such protection to their investments as they may deserve, subject always to the contingency that if another utility can, by reason of superior natural advantages or patented processes or other means, give to the public a service as good as the existing utility, at rates materially less, the interests of the public must be deemed paramount and the new utility must be given an opportunity to serve the public.

Under this new state policy, competition between public utilities is not of itself necessarily a good thing. Whether or not it is a good thing depends upon the results which flow from it in each particular case. If just as good results can be secured by regulation and supervision under state authority of an existing utility which is a natural monopoly, so that the rates and service enjoyed by the public are as good as they reasonably could be under normal competition, the consuming public has nothing to gain by competition, while that portion of the public which invested its funds in the securities of an existing utility may have much to lose by a competitive condition which, while not helpful to the consuming public, can be extremely hurtful to the investing public, and particularly discouraging to persons who are proposing to invest their money in the development of new utilities in this State in sections thereof where there are no existing utilities of the same character and where they are imperatively demanded for the development of the State.

This aspect of the Public Utility question must not be confused with trust regulation as it is by some persons who do not make the distinction between a natural monopoly such as a telephone, for example, and an ordinary commercial trust. The proponents of the theory that trusts shall be controlled by competition as well as those advocating control by regulation, all agree that better control of a natural monopoly, with which competition under ordinary conditions necessarily means duplication, can be had by adequate and efficient regulation than by unrestricted competition.

While this policy is new in this State, it is the accepted policy in most of the states of the east and middle west, which have adopted the policy of effective state regulation of public utilities. This difference, however, exists in the method of working out this policy as between California

on the one hand and these other states on the other--in the other states the commissions have been very much disinclined to permit new utilities to enter a field already served by another utility of like character, even if that utility has not done its duty to the public. In such a case the other commissions largely give to the existing utility its day of repentance and permit it to meet the improved rates or service of the newcomer, thereby discouraging the development of new enterprises. On the other hand, the California Commission, unless particular circumstances call for a different method of handling the problem, looks to the existing utility as of the day when the newcomer knocks at the door. If the existing utility is at that time found not to be doing its duty to the public, the newcomer is permitted to enter. While this policy may result in the duplication of properties in some few cases, the general effect thereof will be extremely salutory for the reason, first, that the existing utilities will be put on their good behavior all the time, and not merely when they are expecting competition, and, secondly, that persons proposing to invest their money in public utilities in California may know that if they find territory in which there is no such public utility or territory which is being served but in which the existing utility is not doing its duty to the public, this Commission will permit the new utility to proceed. In this way, persons proposing to further develop the State of California by means of new utilities are encouraged to proceed. In other words, the policy of most of the other states amounts to throwing cold water on the development of new public utilities, while in California such development is encouraged in proper cases.

The leading case which has been decided by this Commission under Section 50 of the Public Utilities Act is the case of Pacific Gas and Electric Company vs. Great Western Power Company, Case No. 269, decided June 16, 1912. In that case the

Great Western Power Company applied for permission to enter the counties of Napa, Sonoma and Solano, which counties were being served with electric energy by the Pacific Gas and Electric Company and other electric corporations. In its decision in that case, the Commission established the general principles by which it will be guided in all cases arising under the provisions of Section 50 of the Public Utilities Act, in so far as those cases fall within the facts appearing in Case No. 269. In that case the Commission held, in effect, that if the existing utility is giving rates as low as can reasonably be expected and is serving all who apply, so that the field is fully covered, this Commission will be slow to permit a new utility of the same character to enter the same field unless it appear that the new utility, by reason of some natural advantage or improvement in process or similar matter, can give to the public service materially better or rates materially lower than those of the existing utility. In that case the Commission held that if the rates are as low as they can reasonably be expected to be and the service is as good, and the field is covered, the public has nothing to gain by the admission of the new company, while the general public of the State has much to lose by the establishment of the principle that even if a public utility is doing its full duty to the public, it shall nevertheless be subject to the competition of any other public utility desiring to enter the same field, either for legitimate or illegitimate purposes. The Commission held that it would expect evidence to be introduced, showing clearly the facts with reference to the different elements of the case, and bearing particularly on the ability both of the existing company and of the applicant profitably to give such rates and service as to fully comply with the duty of a public utility to the public. Furthermore, the Commission held in that case that it would judge the two utilities

as of the day when the new utility filed its application with this Commission, so that a utility desiring to be protected in the way of competition must do its full duty to the public before and not after the newcomer knocks at the door. These main principles established in the Pacific Gas and Electric Company case were established after considerable thought by this Commission, and will be followed in other cases in so far as they are applicable to the facts of those cases. If other facts arise in any particular case, taking that case out of the facts in the Pacific Gas and Electric Company case, it may be necessary for the Commission to establish further principles.

While we are discussing this point it is well to call attention to the fact that while our decision in the Pacific Gas and Electric Case has had a substantial effect upon the rates and service of the various utilities in the State in territory not under competition, yet up to the present time we know of very few instances where utilities under no fear of competition have gone as far in the revision of their rates and improvement of their service as we feel they should. We believe that our position heretofore assumed and herein affirmed is the correct one, but if after giving it mature trial we find that the utilities do not voluntarily under the stress of potential competition afford the very best rates and the most adequate service which it is possible for them to accord in non-competitive territory, we shall be forced to the conclusion that other methods must be adopted by us to bring about this result. It may be that if the utilities of the State do not in good faith accept the doctrine which we have held applicable in return for being protected from loss of revenue by competition, and accord to all their patrons that treatment to which they are entitled, voluntarily and without compulsion either from this Commission or under competition, we may be constrained to take the view

that they may not justly demand protection from us. It will not avail the utilities anything to enter into understandings between themselves whereby the exclusive territory of one will not be interfered with by another, and under the protection of such agreements maintain unreasonable rates and inadequate service within such territory. This Commission is going to secure for the public reasonable rates and good service from utilities, and as soon as it finds that the method which it has adopted up to the present time, wherein it is sought to give the public the service to which it is entitled without injuriously affecting the utility, has not brought about the desired result, we shall resort to other methods. It cannot be expected if the utilities do not keep their faith that this Commission will continue to be solicitious for their welfare when such utilities, by their disregard of the public interest, have rendered what we consider the fairest solution of this question ineffective.

This brings us to a consideration of the facts in the present application.

The Western States Gas and Electric Company is a corporation created under the laws of this State. Its articles of incorporation were filed in the office of the County Clerk of the City and County of San Francisco on November 30, 1910, and a certified copy thereof was thereafter filed in the office of the Secretary of State. Among other properties acquired by this company, were the properties belonging to the Stockton Gas and Electric Corporation and the American River Electric Company, which two companies were competitors in the city of Stockton and surrounding territory in the sale of electric energy. Since the acquisition of these properties by the Western States Company or in behalf of said company in December, 1910, no company other than this one has served the city of Stockton and adjacent territory with electric energy.

The Western States Company secures its electric energy

partly from its own plants and partly by purchase from other electric corporations. This company's electric energy is secured principally from the hydro-electric plant on the American River, formerly owned by the American River Electric Company, and having a capacity of 3000 K.W. and the steam plant in the city of Stockton having a capacity of 1500 K.W., It also secures under contracts with the Pacific Gas and Electric Company, the Sierra and San Francisco Power Company and the Great Western Power Company, a maximum of 8900 K.W. at prices ranging from .625 cents per K.W.H. in one contract with the Pacific Gas and Electric Company to .875 cents per K.W.H. in the Sierra and San Francisco Power Company contract and .9 cents in another contract with the Pacific Gas and Electric Company. The Sierra and San Francisco Company contract provides for a minimum payment of $25,000 to $39,375 per annum during the life of the contract, which is 22 years, and the second Pacific Gas and Electric Company contract provides for a minimum payment of $27,000 per annum.

It was admitted at the hearing that the Western States Company entered into the contract with the Sierra and San Francisco Power Company for the specific purpose of protecting itself from competition within the City of Stockton, and the attorneys for the Western States Company stated that that Company paid just as much and no more than it had to pay to prevent its prospective competitor from coming in. It is very clear to us that this contract is inequitable and unfair and that the amount to be paid to the Sierra and San Francisco Power Company thereunder is excessive. We are likewise of the opinion that the contract between the Stockton Gas and Electric Company and the Pacific Gas and Electric Company, which the applicant has inherited, and which provides for the .9 cent rate is also unfair from the standpoint of the consum-

ing public. Under these circumstances we do not believe it is lawful or just for the burden of these two inequitable contracts to fall upon the consumers of electricity in the City of Stockton, and we shall impose conditions in the order with reference thereto.

The distributing systems both of the old American River Electric Company and the Stockton Gas and Electric Corporation where taken over by the Western States Company were found to be in poor condition, and individually inadequate and it became necessary to reconstruct and unify these two systems before it was possible in view of the rapidly increasing demands of the community to give to the city of Stockton adequate and proper service. The Western States Company on or about June 1st, 1912, entered upon this work of reconstruction and unification and has pursued the same subsequently thereto and is still engaged in the work. The Western States Company serves in San Joaquin county the city of Stockton, the city of Lodi and certain territory surrounding each of said cities, and has in the city of Stockton and the territory immediately adjacent thereto, some 5333 customers for electric energy.

The Oro Corporation was incorporated on March 13, 1911, under the laws of this State. Shortly thereafter the company purchased from the Oro Water, Light and Power Company its electrical plant and distributing system serving Oroville and vicinity, and also a certain dam site and properties appertaining thereto and water rights in connection with its proposed reservoir in Humbug Valley in Plumas County. The Oro Corporation proposed to impound the waters of Soda Creek, Grizzly Creek, Butte Creek and Yellow Creek in its reservoir to be constructed in Humbug Valley, and thence to lead the water about 36,000 feet through a conduit to a surge tower at the head of the

pressure pipe lines, thence through the pressure pipes to a power house to be constructed on Yellow Creek near its confluence with the North Fork of the Feather River near Belden on the line of the Western Pacific Railway Company. The effective head obtainable will be in the neighborhood of 1900 feet. It is proposed that the generating plant will have an installed capacity of 38,000 K.W. and an annual output capacity of about 166,440,000 K.W.H. The Company further proposes to construct 190 miles of double circuit steel tower transmission lines from said plant through and into the counties of Plumas, Butte, Sutter, Colusa, Glenn, Yuba, Yolo, Solano, Contra Costa, Alameda, Sacramento, San Joaquin and Calaveras, and to build distributing lines so as to serve territory in each of said counties. Until said reservoir, power house and transmission lines have been constructed, the Oro Corporation will rely for its electric energy partly on a contract with the Northern California Power Company, Consolidated, and partly on a steam plant which it is erecting in the outskirts of the city of Stockton. The contract with the Northern California Power Company, Consolidated, was entered into on October 5, 1912, and modified on December 20, 1912, and provides for the delivery by the Northern California Power Company, Consolidated, to the Oro Corporation at a point north of Colusa, at a price of .6 cents per K.W.H. for a maximum of 3000 K.W.H. to be distributed in Butte, Sutter, Yolo and Yuba counties, and .5 cents per K.W.H. for electric energy not to exceed 15,000 K.W. to be used in other counties. In order to serve San Joaquin county from this source, it will be necessary to construct a long transmission line, which work could probably be completed sometime in the fall of this year. In the meantime, the Oro Corporation will have to rely for the service of its customers in San Joaquin County on the steam

plant now under construction in the city of Stockton, which plant, when completed, will be inadequate to serve the customers which the Oro Corporation has secured in those portions of San Joaquin county which it has heretofore been authorized by this Commission to serve, without any regard to the territory involved in the present application.

The only territory which the Oro Corporation has hitherto actually served has been Oroville and certain territory adjacent thereto in Butte County, which the Company has served since its purchase of the property of the Oro Water, Light and Power Company. The electric energy for the supply of this territory in addition to some 6,000,000 K.W.H. purchased last year from the Pacific Gas and Electric Company is being secured from two small hydro-electric plants, the one known as the Lime Saddle plant, and having a capacity of 2000 K.W., and the other known as the Coal Canyon plant, and having a capacity of 1000 K.W.

We shall now consider the questions of extent to which the territory involved is served, the service and the rates, in accordance with the principles established in the Pacific Gas and Electric Company case.

Referring first to the extent to which the Western States Company is serving the territory involved in this application, we find that it is serving the city of Stockton to an extent as great probably as is the case in any other city in this State. Of the 4000 customers which the Oro Corporation, after an exhaustive campaign, secured in the territory involved in this application, only 600 are consumers who do not at present take electric energy from the Western States Company. Of these 600 customers, a large proportion are outside of the limits of the city of Stockton. Expressed in terms of initial connected load, of the total of about 5500 K.W., represented by contracts taken by the Oro Corporation, approximately 4670 K.W. is business now being served

by the Western States Company, whereas only 830 H.P. represent new business not hitherto served.

With reference to the territory in San Joaquin county outside of the limits of the city of Stockton, and involved in this application, we find that the territory north and east of the city of Stockton, north of the right of way of the Atchison, Topeka and Santa Fe Railway Company is being served practically to the same extent as the city of Stockton itself, but that south of the right of way of the Atchison, Topeka and Santa Fe Railway Company there is considerable room for additional service. We shall recommend that with reference to this latter territory the application be granted.

With reference to the quality of the service given by the Western States Company, a large mass of evidence was introduced by both companies. The Oro Corporation contended that the service has been uniformly below what it should be, while the Western States Company contended that the service has been as good as it ought to be, with the exception of certain isolated cases. Both companies in addition to introducing a large number of witnesses, who testified pro and con on this question, also introduced numerous volt meter records, showing the result of actual tests with reference to the question of the voltage and the variations therein. This Commission's experts also make investigations with reference to these questions, particularly the accuracy and individual characteristics of the volt meters used by the two companies.

The testimony of the witnesses and the records of the volt meters both showed that the service has been poorest in the northwest section of the city where the Western States Company is now engaged in the reconstruction and unification of its system. It is extremely difficult in cases of this kind to ascertain from the testimony of patrons whether or not the service of a

public utility has been what it ought to be. It is very easy to find persons to complain against service, however good it may be, and it is somewhat difficult in cases of this kind to secure witnesses who are willing in the face of these complaints, to testify that the service has been good. The fact that the Western States Company was able to secure a large number of reliable citizens to testify that the service has been good, is important evidence, in our opinion, to the effect that it is not fair to make a sweeping criticism to the effect that the service of the Western States Company has been poorer than it ought to be. We are however, convinced, from the testimony and also from certain of the volt meter records, that there has been considerable variation in the voltage causing an annoying flickering in the lights in different portions of the city of Stockton, particularly in the northwestern section, during the period of reconstruction and unification and that in this respect and also in the matter of low voltage, caused by an overloaded condition of certain of the distributing lines, the Western States Company has failed in its full duty to the public. That a considerable portion of the complaints in this respect will be removed when the reconstruction and unification of the distributing system of the Western States Company has been completed seems equally clear. The fact which we desire to emphasize in this connection, however, is that at the date of the hearing it appeared clearly that the Western States Company had not accorded to the public that quality of service to which it is justly entitled. Whether or not there are circumstances in whole or in part lending to excuse the default on the part of this company will be considered later.

The Oro Corporation claimed that its service would be superior to that of the Western States Company, but there is nothing in the record to substantiate this claim, other than its mere assertion by the Oro Corporation. We have no means of knowing

whether the Oro Corporation would give better service than that which has been given by the Western States Company, and, consequently, in the matter of service must confine our attention to that which has been given and is now being given by the Western States Company.

We come now to the very important question of rates. While it is true that service and rates are mutually dependent on each other, it will be convenient for the purposes of this application to consider the question of rates apart from the question of service.

The rates at present being charged in the territory affected, by the Western States Company, are as follows:

Regular contract 3 and 5 years-
Lighting and Power Rates- Stockton:

Lighting- Meter Rates:

7 cents	per KW.Hr. minimum bill -	$ 1.00 per month
5 "	" " " " " -	15.00 "

A. C. Power - Meter Rates:

4 cents	per KW.Hr.	for first	500 kilowatts	or less
3½ "	" "	" second	500 "	" "
3 "	" "	" third	500 "	" "
2½ "	" "	" balance		

For less than 5 HP capacity installed, add 1 cent to each of the above rates.

Minimum bill of $1.00 per month per horse power capacity of motors installed. No bill less than $2.00 per month. Minimum bill of $2.00 per month per horse power capacity of polyphrase motors installed less than 5 HP. No bill less than $4.00 per month. Motors installed of 50 HP. and above 2½¢ per kilowatt hour, minimum $1.00 per month per horse power capacity of motor installed.

D. C. Power - Meter Rates:

5 cents	per KW.Hr.	for first	500 kilowats	or less
4 cents "	" "	" second	500 "	" "
3 "	" "	" third	500 "	" "
2½ "	" "	" balance.		

Minimum bill of $1.00 per month per HP. capacity of motor installed.

The rates which the Oro Corporation proposes to charge in the territory affected, both for lighting and power, are as follows:

RESIDENCE LIGHTING.

Less than 100 KWH consumed per month	6.5¢ K.W.H.
100 to 140 " " "	6.3¢ "
140 to 180 " " "	6.1¢ "
180 to 220 " " "	5.8¢ "
220 to 260 " " "	5.5¢ "
260 to 300 " " "	5.2¢ "
300 to 500 " " "	4.9¢ "
Over 500 " " "	4.7¢ "

10% discount if paid before the 10th of the month

Minimum $1.00 per month.

COMMERCIAL or BUSINESS LIGHTING

Less than	95	KWH. consumed per month	6.0¢	per KWH.
95 to	125	" "	5.8¢	"
125 to	160	" "	5.6¢	"
160 to	200	" "	5.4¢	"
200 to	245	" "	5.2¢	"
245 to	295	" "	5.0¢	"
295 to	500	" "	4.8¢	"
500 to	700	" "	4.6¢	"
700 to	900	" "	4.4¢	"
900 to	1100	" "	4.2¢	"
1100 to	1300	" "	4.0¢	"
1300 to	1700	" "	3.8¢	"
1700 to	2100	" "	3.6¢	"
2100 to	2500	" "	3.4¢	"
2500 to	3000	" "	3.2¢	"
Over	3000	" "	3.0¢	"

10% discount if paid by 10th of month

Minimum $1.00 per month.

POWER.

From one up to and not including five horse power "Less than 200 K.W.H. consumed per month 4½¢ per K.W.H. All over 200 K.W.H. 85% of Commercial Rate." By Commercial Rate we refer to the rate given on Commercial Contracts in the City of Stockton, without discount. No discount allowed. Minimum $1.00 per installed horse power per month.

For 5 H.P. and over the following rates are effective:

5 – 7½ H.P.	1st 100 K.W.H. used per installed H.P.per mo.	4¢
	2nd 100 " " " " " "	3¢
	All used in excess of above	2 3/4¢
7½ –10 H.P.	1st 100 K.W.H. used per installed H.P.per mo.	3½¢
	2nd 100 " " " " " " "	3¢
	all in excess of above	2½¢
10 – 20 H.P.	1st 100 K.W.H. used per installed H.P. per mo.	3¢
	2nd 100 " " " " " "	2 3/4¢
	All used in excess of above	2 1/4¢
20 – 30 H.P.	1st 100 K.W.H. usedper installed H.P.per mo.	2 3/4¢
	2nd 100 " " " " " "	2½¢
	All used in excess of above	2¢
30 – 40 H.P.	1st 100 K.W.H. used per installed H.P. per Mo.	2 3/8¢
	2nd 100 " " " " " "	2 1/4¢
	all used in excess of above	1 3/4¢
40 – 50 H.P.	1st 100 K.W.H. used per installed H.P.per mo.	2 1/4¢
	2nd 100 " " " " " "	2¢
	all used in excess of above	1 3/4¢

No discounts allowed. Minimum bill $1.00 per installed H.P. per mo. When installation is on the changing line, such as a 7½ H.P. motor, the lower rate for this size would be effective.

Power load over 50 H.P. takes special rates, depending upon characteristics of the considered load; namely, the load factor and other special conditions, if any.

The rates of the Western States Company and those proposed by the Oro Corporation are diagramatically represented on a chart attached hereto and marked "Exhibit A".

It appears from these rates and from the chart that the Western States Company has a uniform rate for electric energy for residence lighting, irrespective of the amount of current consumed, which rate is 7¢ per KWH if the consumer is willing to sign a three year contract, otherwise 8¢. It appears also that the residence lighting rate proposed by the Oro Corporation is a sliding rate, running from a maximum of 6½¢ per KWH to a minimum of 4 3/4¢ per KWH, the price depending upon the quanity consumed. These rates can be taken advantage of only by persons who sign a five year contract. No rates have been proposed for persons who are unwilling to sign a contract. In comparing the residence lighting rates of these two companies it is necessary only to consider the maximum rates, for the reason that very few patrons of the Oro Corporation would consume a sufficient amount of electric energy to entitle them to a rate less than the top rate. Persons who pay simply the minimum charge per month would have to pay the same amount to both companies. Other residence lighting consumers would secure their electric energy from the Oro Corporation at a reduction of ½¢ per KWH, with a discount of 10% for prompt payment.

Referring now to the commercial lighting, it appears that the Western States Company's rate is a 5¢ rate, irrespective of the amount of electric energy consumed, except that there is a minimum charge of $15.00 per month per meter. The Oro Corporation proposes a commercial lighting rate graduated according to the amount used and ranging from a maximum of 6¢ per KWH to a minimum of 3¢ per KWH, and also subject to a discount of 10% for prompt payment. Due to the $15.00 minimum of the Western States Company, the average commercial consumer would be materially benefited by the establishment of the Oro Corporation's proposed rate.

With reference to the power rates, while there is no marked difference between those now in effect by the Western States Company and those proposed by the Oro Corporation, such difference as exists is in favor of the existing rates of the Western States Company.

It appears to us that the rates proposed by the Oro Corporation have been worked out very largely with the purpose of simply "shading" the existing rates of the Western States Company, and not with the sole intention of ascertaining the rate for which the Oro Corporation can afford, bearing in mind a reasonable return, to supply electric energy. We desire to make it clear that the Commission does not look with favor on the practice of merely "shading" existing rates. A utility desiring to enter a field being served by another utility of like character should understand that it can not make out its case by simply figuring out rates slightly lower than those of the existing utility, but that it must present to the Commission evidence clearly showing what rate it can reasonably give to the public and at the same time secure for itself a reasonable return on the value of the property actually used and useful for the public purpose. It should be said that in this case the engineers of the Oro Electric Corporation presented to the Commission complete evidence with reference to this point.

We desire to draw attention to the fact that the Western States Company has in effect two schedules of rates, the lower of which can be taken advantage of only by persons who are willing to sign contracts for three years, and that the only persons who can take advantage of the rates proposed by the Oro Corporation on the schedules proposed to this Commission are persons who are willing to sign contracts for five years. We desire to draw attention to the fact that no such contract on the part of either of these corporations can stand as against the power of this Commission under the Public Utilities Act to fix rates which shall be just and reasonable. We desire also to deprecate the practice on the part of public utilities in trying to induce consumers to sign long term contracts, with the result that these consumers, generally not understanding their legal rights, will believe that they have no right to ask for any variation in the terms of such contract during the life thereof. When the Oro Corporation presents to this Commission for formal filing the rates which it proposes to give to the territory into which, under the order of this Commission, the Company is permitted to enter, the Commission will give serious consid-

cration to the question as to whether it will permit the Oro Corporation to confine those rates to persons who have signed five year contracts. Consideration will also be given to the question as to whether or not such rates as the Western States Company may file as the result of the decision in this case may be limited to persons who are willing to sign three year contracts.

We come now to the important question whether or not the Oro Corporation can reasonably afford to give the rates which it proposes for the territory affected in this proceeding. In support of its contention that it could do so, the Oro Corporation presented the report of Mr. H. P. Gillette, which report is a careful and thorough presentation of estimates to show that the Oro Corporation can reasonably give the rates which were submitted to Mr. Gillette by the Oro Corporation when its Yellow Creek development and transmission system into San Joaquin county shall have been completed. We desire to express our appreciation of Mr. Gillette's thorough work. His report, as well as the data submitted by the other engineers on each side of this controversy have been examined with great care by this Commission and its experts. We wish to express the hope that in future proceedings of a similar character the parties will make the same painstaking efforts to give to the Commission the facts as was done in this case.

Mr. Gillette presented an estimate of $6,507,300 as representing the cost of hydraulic development, generating plant, transmission lines and substations. He concluded that on the basis of this estimate and on the assumption that the entire output capacity of the plant would be utilized, and on the further assumption that the transmission and distributing losses would not be in excess of the low percentages used by him, the Oro Corporation can reasonably furnish electric energy at the rates presented to this Commission, to the persons who have signed contracts with the Oro Corporation.

As hereinbefore stated, this report has received the most careful attention in the work which has been done on this opinion. Without commenting in detail on the report, we wish simply to say that the theory presented by the Oro Corporation of ascertaining the value of

the water rights of an electrical corporation on the basis of producing the electric energy in some manner, as by purchase from some other company or the generation from some other source of power, instead of on the actual purchase price and expense involved is so well known and so indefensible that we shall not here discuss the methods used. We shall content ourselves by pointing out that on this basis the water rights of the Western States Company have no value at all and those of the Oro Corporation are worth more than a million dollars less than nothing. This conclusion shows the difficulty of wandering into realms of theory when seeking to ascertain facts.

It becomes unnecessary to consider Mr. Gillette's report in further detail, for the reason that the Commission has reached the conclusion that as long as the Oro Corporation can secure from the Northern California Power Company, Consolidated, the amount of electric energy specified in its contract with that company, at the prices therein specified, the Oro Corporation can reasonably supply electric energy to the territory affected in this proceeding at the rates which that company has presented to this Commission.

We are brought now to a consideration of the analogous question of whether or not the Western States Company has been in a position so that it reasonably could have supplied electric energy at rates less than those which it has been collecting. In this matter we desire to draw attention to the fact that the rates which have been collected by the Western States Company are among the lowest for similar service in this State. In support of its contention that its rates have been as low as they reasonably could be expected, the Western States Company presented a report of the value of its property, which report the Oro Corporation attacked by the testimony of Mr. Henry L. Gray. We are of the opinion that the valuation report presented by the Western States Company shows a valuation far in excess of the real value of the property. Not merely are the percentages added for overhead expense and similar items considerably in excess of what, in our opinion, they ought

to be, but the unit prices used for physical elements of the plant are in many cases greatly in excess of the price for which the material can actually be delivered at the plant and various points on the system. This is particularly true as to copper and aluminum conductors, poles and miscellaneous transmission and distribution equipment. On the other hand while Mr. Gray's report concerning the property of the Western States Company probably indicates more nearly the actual value of the property, we have been unable to give to this report the credence which we should like to have accorded to it, for the reason that the report was very hurriedly made and without a thorough knowledge of the conditions under which the plant was constructed or which obtain at the present time.

While the Commission has given considerable thought to this question, we have been unable to ascertain whether or not the rates accorded by the Western States Company have been as low as they reasonably might be expected to be, for the reason that the Western States Company is at present engaged in the re-construction and unification of its plant, with the result that its property accounts, showing the property which should be considered in answering these questions are in such a confused condition that we have been unable so far to ascertain the proper basis for the establishment of the rates of that company in the territory affected.

Up to this point in our inquiry we accordingly find the condition to be about as follows: The Western States Company is serving the territory as completely as could reasonably be expected. On the other hand that Company's service has not been what it should be. The rates proposed by the Oro Corporation, which rates are in part slightly lower than those of the Western States Company can reasonably be accorded by the Oro Corporation. We are unable because of the re-construction through which the Western States Company is now passing to ascertain whether that company could reasonably have given rates lower than those which it has accorded.

Under these facts, it is a difficult matter to determine

whether or not the applicant's prayer should be granted. If the Commission authorizes the Oro Corporation to enter the city of Stockton and the surrounding territory, the result will be a practical duplication of the entire overhead and underground system of the Western States Company at an expense of some $500,000.00 which expense will have to be borne in some way or other, by the public, unless the Western States Company were driven from the field, in which case the Company's loss would have to be borne by the investors in its securities. The tearing up of the streets of Stockton in connection with the installation of a second underground system and the erection of poles and wires in connection with the overhead distributing system would inconvenience the public and further disfigure the streets of the city. Furthermore, if the application were granted it would result in taking from the Western States Company about 3400 of its present 5333 customers and would make it necessary for that company either to operate at a loss or to raise its rates to make up for the deficit due to the loss of more than half of its customers. By reason of the fact, however, that the Western States Company has not given to the people of Stockton the service to which they are entitled and of the strong probability that the company could have accorded in part at least a better rate, the company is not entitled to the consideration which it would otherwise receive. If, on the other hand, the Commission should deny the application of the Oro Corporation, the development of that company would by no means be materially injured. It appears that of a total estimated maximum peak load capacity of 38,000 K.W., the Oro Corporation has already contracted for about 10,000 K.W. outside of the territory affected in this proceeding and that it expects to be able to dispose of all the remaining energy in territory outside of that affected by this proceeding, as appears from the following table of future load of the Oro Corporation which was submitted to this Commission by the Corporation:

FUTURE LOAD OF THE ORO ELECTRIC CORPORATION, WITH ITS CHARACTER ARRANGED IN ORDER OF ITS IMPORTANCE

IN BUTTE, YUBA & SUTTER COUNTIES

PRESENT REQUIREMENTS . . . . . 3000 KW

FUTURE REQUIREMENTS . . . . . 5000 KW

CHARACTER OF LOAD:
Industrial, Lighting, Irrigation & Reclamation.

IN COLUSA & GLENN COUNTIES

CHARACTER OF LOAD
Reclamation, Irrigation, Lighting & Industrial. . 2000 KW

IN YOLO COUNTY

CHARACTER OF LOAD:
Reclamation, Irrigation, Lighting & Industrial .. 3000 KW

IN SACRAMENTO COUNTY
Natomas Consolidated, and other loads.

CHARACTER OF LOAD:
Industrial, Reclamation, Irrigation & Lighting ..12000 KW

IN SOLANO COUNTY

CHARACTER OF LOAD:
Reclamation, Irrigation, Industrial & Lighting .. 4000 KW

IN SAN JOAQUIN COUNTY

Outside Stockton.

CHARACTER OF LOAD:
Irrigation, Reclamation, Industrial & Lighting ...4000 KW

IN CALAVARAS COUNTY

CHARACTER OF LOAD: Industrial . . . . . .2000 KW

CONTRA COSTA COUNTY

CHARACTER OF LOAD: Industrial, Irrigation
Reclamation & Lighting . . . . 3000 KW

It appears further that of the entire estimated maximum peak load of 38,000 KW it would take only 2000 K.W. to serve the city of Stockton, and immediate vicinity, or a little over 5% of the entire putput.

In order to decide the application, it becomes necessary to consider two elements which it was not necessary to consider, or which did not exist, in the Pacific Gas and Electric Company case, namely, the effect which the fact that the Western States Company is in the middle of a period of re-construction, should have on this application, and also the effect which the Oro Corporation's conduct in territory which it exclusively serves should have on this application as showing the weight which should be given to that company's representations as to what it proposes to do.

Referring to the first of these two points, it appears, as hereinbefore indicated, that the Western States Company has for some time been engaged in the work or reconstructing the two inferior systems to which it is the heir and in unifying the same so as to improve the service, prevent line losses and establish an adequate and efficient plant and system. It becomes a serious question as to whether it is fair in a case of this kind to judge a company while it is in the midst of such a condition. It occurs to us that it would be just as unfair to pass finally on this company in its present condition as it would be to permit a utility to enter a city in which an existing utility had just completed its plant and was just beginning to serve its customers, and found itself under the difficulties as to both rates and service which would follow from such a condition. It seems to us that common fairness demands that the Western States Company be given an opportunity to finish its re-construction work within a period to be designated in the order herein and that it then be judged as of that time. In reaching this conclusion we do not overlook

the fact that more time than was necessary has been consumed by the company in the reconstruction work which it has hitherto performed; but, bearing in mind all the facts of the case, we believe that it would be just to reach the conclusion herein indicated.

In reaching this conclusion, we wish to be distinctly understood as affirming the ruling in the Pacific Gas and Electric Company case to the effect that the existing utility and the applicant are to be judged as of the time when the application is filed. We wish to be distinctly understood as announcing that we will not, except under the most unusual circumstances, permit an existing utility which has not done its duty to the public, to keep its field to itself by agreeing that it will henceforth improve its service or lower its rates or more completely serve the field or in any other respect comply with its full duty to the public. The only reason why we do not judge the Western States Company as of the day when the Oro Corporation filed its application is that on the facts of this case, it would be unfair and unjust to do so.

Feeling as we do that the Western States Company has been "caught" at a peculiarly disadvantageous time, nevertheless we would grant the application in this case unless we were convinced that there is reasonable ground for believing that as the result of the completion of the reconstruction work the Western States Company will be able to do its full duty, both as to service and as to rates. There is no doubt that a large part of the poor service which has existed in Stockton within the last few months has been caused by the reconstruction work which was being done by the Western States Company in an effort to improve its system. To that extent, undoubtedly, the service will be improved when the work has been completed.

In passing, it is well to note that this very con-

dition is the result of duplication by competing companies in the past under conditions only slightly different from the result which would follow from the granting of this application.

With reference to rates, there is reasonable ground for the belief that the completion of the reconstruction of work will enable the Western States Company to give lower rates both because of the elimination of a considerable percentage of the line losses and because, as the result of the completion of the reconstruction work, the Company will be able definitely to make a segregation between that portion of its property which is used and useful for the public purpose and such portion as has really amounted all along to a duplication and which will largely be "junked" when the work has been completed.

Referring to the second point, this Commission wishes it to be distinctly understood that when a utility applies to this Commission for permission to follow some proposed line of conduct it will be judged as to its promises by the way in which its promises in other proceedings before the Commission have been kept. During the hearing on application No. 64, it appeared that the Oro Corporation was charging in the city of Oroville and vicinity, a rate of .10¢ per K.W.H. for electricity for lighting purposes with a penalty of .02¢ per K.W.H. if the bills were not paid on or before the 15th day of the month next succeeding that in which the current was used. Upon having its attention drawn to the matter in connection with the considerably lower rates which the Oro Corporation was promising to put into effect in the territory then under consideration, the company made the statement that it would immediately proceed to the reduction of these rates. It developed at the hearing in the present proceeding, which hearing was held some eight months subsequent to the time of this promise, that the Oro Corporation was still collecting the high rates which it had promised this Commission to reduce. It appeared

further, that the company had filed with this Commission a schedule of rates to be effective January 1, 1913, showing reduced rates, but that the Company had not complied with this filing. The explanation of the Oro Corporation to the effect that the Board of Trustees of the city of Oroville had agreed that the company might continue to charge the higher rates until May 10, 1913, furnishes no excuse for the continued collection of these rates in the territory outside of the city of Oroville over which this Commission has authority to establish rates or for the violation of the statement contained in the rates filed with this Commission to the effect that the reduced rates would become effective both within and without the city of Oroville, on January 1, 1913.

It also appeared in this proceeding that the Oro Corporation has been paying far more attention to signing up contracts in territory served by other utilities outside of the territory which it has heretofore been permitted to enter than in proceeding to the development of the extensive territories into which this Commission, by its order in application No. 64, authorized the company to enter for the development thereof.

We desire at this point to state that in all applications henceforth on the part of one public utility to enter the territory being served by another Public Utility of like character, this Commission will look not only to the existing utility, but also to the manner in which the applicant has fulfilled its duties to the public and complied with its representations to this Commission with reference to territory which it may be serving.

As hereinbefore stated, the application will be granted as to such portion of San Joaquin County as lies south of the right-of-way of the Atchison, Topeka and Santa Fe Railway Company, extending from a point east of Bixler, through Stockton and Burnham, to the easterly boundary of San Joaquin County

other than the city of Stockton. The application, in so far as it affects the county franchise is also granted with reference to the remaining portion of San Joaquin County lying north of said right-of-way of the Atchison, Topeka and Santa Fe Railway Company and not heretofore excepted in this Commission's Order and Supplemental Order in Application No. 64.

With reference to the remaining portion of the territory affected by this application, including the city of Stockton and a portion of San Joaquin County adjacent thereto, the Western States Company will be given ninety days from the date of the order in this proceeding within which to complete its reconstruction work. If the Western States Company shall within said time have satisfied the Commission that its reconstruction work has been completed and that its service has become what it should be and shall have submitted to the Commission such rates as the company may deem just and reasonable, not to exceed, in general, the rates which the Oro has shown that it can reasonably accord, the Commission Corporation will issue a Supplemental Order denying the application as to this portion of the territory. Otherwise the Commission will, by its supplemental order, grant to the Oro Corporation its application in toto.

We submit herewith the following form of order:

O R D E R

Application having been made to the Railroad Commission of the State of California by the ORO ELECTRIC CORPORATION, under the provisions of Section 50 of the Public Utilities Act, for a certificate that public convenience and necessity require or will require the exercise by said company of the rights and priviledges granted to it by Ordinance No. 566 of the city of Stockton, approved December 30, 1912, and the performance of construction work thereunder, and also

for authority to exercise the rights and privileges granted to it by Ordinance No. 339, passed by the Board of Supervisors of the County of San Joaquin on January 7, 1913, and the performance of construction work thereunder to the extent to which this Commission has not heretofore authorized the Oro Corporation to perform construction work within said county of San Joaquin outside of the limits of incorporated cities and towns, and a public hearing having been held on said application, and the WESTERN STATES GAS AND ELECTRIC COMPANY, having appeared and filed its answer and protest to said application, and the Commission being fully advised in the premises,

WE HEREBY FIND AS A FACT, that public convenience and necessity require or will require the exercise of rights and privileges under said franchises and the performance of construction work thereunder, to the extent hereinafter permitted and that they do not require the exercise of such rights or privileges or the performance of construction work, to the extent to which said application is hereinafter denied. Basing our conclusion on this finding of fact and on the further findings contained in the opinion which precedes this order,

IT IS HEREBY ORDERED AS FOLLOWS:

1. It is hereby declared that the present or future public convenience and necessity require or will require the exercise by Oro Electric Corporation of the rights and privileges heretofore granted to said corporation by Ordinance No. 339 of the Board of Supervisors of San Joaquin County, passed January 7, 1913, and the performance of construction work thereunder, in so far as the territory described in said ordinance is located in San Joaquin County, south of the right-of-way of the Atchison, Topeka and Santa Fe Railway Company, extending from a point east of Bixler through Stockton

and Burnham to the easterly boundary of said San Joaquin County, except the city of Stockton, and that the present or future public convenience and necessity require or will require the exercise of rights and privileges under said franchise in such portions of the county of San Joaquin lying north of said right-of-way, other than incorporated cities and towns and other than such portions of San Joaquin County as to which permission on the part of the Oro Electric Corporation to enter the same was refused in this Commission's Order and Supplemental Order in Application No. 64.

2. With reference to the city of Stockton and the territory adjacent thereto north of said right-of-way of the Atchison Topeka and Santa Fe Railway Company, as to which permission to the Oro Corporation to enter the same was refused in this Commission's order and supplemental order in Application No. 64,

IT IS HEREBY ORDERED that the Western States Gas and Electric Company be given Ninety (90) days from the date of this order within which to complete its work of reconstruction and unification in and around the city of Stockton. If at the end of this period, the Western States Gas and Electric Company shall have satisfied this Commission that its said work of reconstruction and unification has been completed, and that its service has become satisfactory, and if said company shall within said time present to this Commission such rates as it may consider just and reasonable, not to exceed in general the rates presented by the Oro Electric Corporation, this Commission will make its supplemental order denying the application with reference to said territory. If the Western States Gas and Electric Company fails to meet these requirements to the satisfaction of this Commission, the Commission will thereupon, without further proceedings, issue its order granting this application as to the remaining territory:

Within thirty (30) days from the date of this order, the Western States Company shall file in this proceeding, a stipulation with the Commission and the Board of Trustees of the City of Stockton to the effect that it entered into the contract with the Sierra and San Francisco Power Company for the purpose of protecting itself from competition, and that the amount which it is obligated to pay to the Sierra and San Francisco Power Company under this contract is excessive and likewise that the amount which it is obligated to pay to the Pacific Gas and Electric Company under the .9 cent rate contract referred to in the opinion herein is excessive, and that it will not in any rate fixing inquiry, either before the authorities of the City of Stockton or before this Commission, directly or indirectly use the expenditures required under these two contracts as an element to be considered in making rates, beyond the amount which the amount of electricity secured under these contracts is reasonably worth.

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 29th day of April, 1913.

John M. Eshleman

H. H. Loveland

Alex Gordon

Max Thelen

Edwin O. Edgerton