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ORIGINAL

Decision No. 6655

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 BLACK DIAMOND WATER COMPANY, a cor-)
 poration, and PITTSBURG WATER COMPANY,)
 a corporation, for an order authoriz-)
 ing the transfer of properties, the)
 execution of a mortgage and the issue)
 of bonds and stock.) Application No. 4806.

B. D. Marx Greene, for applicants.

DEVLIN, Commissioner.

O P I N I O N

The Railroad Commission is asked to make an order authorizing:-

- 1.-Black Diamond Water Company to sell and Pittsburg Water Company to purchase all of the properties of Black Diamond Water Company.
- 2.-Pittsburg Water Company to execute a mortgage.
- 3.-Pittsburg Water Company to issue \$34,000.00 of stock and \$63,000.00 of bonds to pay for the properties of Black Diamond Water Company.
- 4.-Pittsburg Water Company to issue \$5,000.00 of bonds or stock for and as working capital.

For a description of the properties of Black Diamond Water Company, the extent and method of its operations, reference is

here made to Decision Number 3247, dated April 17, 1916 (Vol. 9, Opinions and Orders of the Railroad Commission of California, Page 710) and Decision Number 6470, dated June 30, 1919.

In Decision Number 6470, the Commission established a rate schedule designed to yield the following annual charges:-

Interest	\$6,500.00
Depreciation Annuity	2,835.00
Maintenance and operating ex- penses.....	<u>16,222.00</u>

Total\$25,557.00

The Commission's attention is called to the appraisal of the properties by H. A. Noble, one of the Commission's engineers, and by A. Kempkey, engineer for the company, such appraisals having been made in connection with Application Number 4471, and referred to in Decision Number 6470. H. A. Noble estimated the probable cost new of the properties as of June 1, 1919 at \$89,223.00 and allowed a 4 per cent sinking fund annuity of \$2,373.00. A. Kempkey estimated the probable original cost of the properties at \$98,328.00, and the depreciated cost at \$70,717.00. From the \$70,717.00, B. D. Marx Greene, attorney for Black Diamond Water Company and Vice President and General Manager of Pittsburg Water Company, in this proceeding deducts \$1,945.00, representing cost of pipe lines which went out of service, leaving a balance of \$68,772.00. Since the appraisal of the properties referred to, Black Diamond Water Company has purchased a barge at a cost of \$13,752.00 to haul water and made other improvements costing about \$1,000.00 which brings the probable depreciated cost of the properties up to \$83,524.00.

Pittsburg Water Company asks permission to issue bonds equal in amount to 75 per cent of the \$83,524.00 and common stock equal in amount to the remaining 25 per cent or \$63,000.00 of bonds and approximately \$21,200.00 of stock.

To the \$83,524.00, B. D. Marx Greene adds \$13,890.00 which he alleges represents the difference between an 8 per cent return on the reasonable cost of Black Diamond Water Company's properties and the actual net earnings of the company during the past three years. This difference, \$13,890.00, he characterizes as a development cost, adds it to the reported depreciated cost of the properties and proposes to issue \$13,890.00 of stock against it. His argument is based upon the theory that the Commission has recognized 8 per cent as a proper return on public utility investments. There is nothing in the Commission's decisions which warrants such a conclusion. It is true that at times the Commission has fixed rates designed to yield an 8 per cent return, but it should be remembered that in all rate, as well as all other proceedings, the orders of the Commission are based upon the facts then before it. In Decision Number 3257, dated April 17, 1916, in which decision the Commission fixed the rates of Black Diamond Water Company, there is no reference made to the establishment of rates yielding an 8 per cent return and even if such statement did appear in the decision, it would not follow that the alleged loss should be capitalized. The proper remedy in case of a loss would appear to be to ask for a revision of rates before or shortly after the effective date of the Commission's decision and not wait for three years and then apply for permission to capitalize the difference between the actual net return and an assumed return. The request to issue the \$13,890.00 against alleged losses should, in my opinion, be denied.

Pittsburg Water Company also asks permission to issue \$5,000.00 of stock or bonds for the purpose of obtaining working capital. The properties of the Black Diamond Water Company are to be transferred to the Pittsburg Water Company free and clear of all indebtedness. The Black Diamond Water Company will, however, retain the cash in its treasury and its current assets. In order to put

the new company in a condition where it may go ahead with its public utility functions, it is apparent that it should be provided with a certain cash working fund. It occurs to me that this fund should be obtained through the issue of stock rather than bonds. It appears that the F. E. Booth Company, who owns all of the stock of Black Diamond Water Company, has agreed to advance to Pittsburg Water Company, \$5,000.00 for working capital, provided that company issue to it, \$5,000.00 of its stock or bonds. If prices decline and the necessity for a working capital as large as \$5,000.00 disappears, part of the moneys herein allowed for working capital should be invested in permanent improvements and construction.

Pittsburg Water Company also asks permission to execute to Union Trust Company of San Francisco a mortgage securing the payment of \$100,000.00 of 6 per cent bonds, due July 1, 1949. The proposed mortgage ^{will} constitute a first lien upon the properties to be acquired by Pittsburg Water Company. Of the bonds, \$63,000.00 may be issued forthwith and the remaining \$37,000.00 from time to time in an amount or amounts not exceeding 75 per cent of their reasonable cost to the company of any new or additional properties purchased or acquired or of any permanent extensions, additions, improvements or betterments.

I herewith submit the following form of Order:-

O R D E R

BLACK DIAMOND WATER COMPANY having applied to the Railroad Commission for authority to sell its properties described in Exhibit "C", attached to the petition herein, to Pittsburg Water Company, and PITTSBURG WATER COMPANY having applied to the Railroad Commission for permission to purchase said properties and to issue bonds and stock, a public hearing having been held, and the Commission being of the

opinion that the money, property or labor to be procured or paid for by such issue of bonds or stock is reasonably required for the purpose or purposes specified in this Order, and that such purpose or purposes are not in whole or in part reasonably chargeable to operating expenses or to income;

IT IS HEREBY ORDERED that Black Diamond Water Company be, and it is hereby, granted authority to sell to Pittsburg Water Company the properties described in Exhibit "C" attached to the petition herein.

IT IS HEREBY FURTHER ORDERED that Pittsburg Water Company be, and it is hereby, granted authority to execute a mortgage or trust deed substantially in the same form as the mortgage or trust deed attached to the petition herein and marked Exhibit "B".

IT IS HEREBY FURTHER ORDERED that Pittsburg Water Company be, and it is hereby granted authority to issue \$26,200.00 of common stock and \$63,000.00 face value of bonds.

The authority herein granted is upon the following conditions and not otherwise:-

1.-The \$63,000.00 of bonds and \$21,200.00 of the stock herein authorized to be issued may be delivered to Black Diamond Water Company in exchange and in payment for the properties described in Exhibit "C" attached to the petition herein.

2.-Stock in the amount of \$5,000.00, the issue of which is herein authorized, may be sold by Pittsburg Water Company for cash at not less than the par value thereof and the proceeds used for and as working capital.

3.-The consideration at which the public utility properties are herein authorized to be transferred shall not be considered as a measure of value of said properties before this Commission or any other public body for rate fixing or

any purpose other than the transfer herein authorized.

4.-The approval herein given of said mortgage or trust deed is for the purpose of this proceeding only and an approval only in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said mortgage or trust deed as to such other legal requirements to which said mortgage or trust deed may be subject.

5.-Within thirty days after the execution by the petitioners herein of an instrument of conveyance transferring the properties herein referred to, a certified copy of said instrument of conveyance shall be filed with the Railroad Commission by Pittsburg Water Company.

6.-Pittsburg Water Company shall keep such record of the issue and sale of the bonds and stock herein authorized and of the disposition of the proceeds, as will enable it to file on or before the twenty-fifth day of each month a verified report as required by the Railroad Commission's General Order Number 24, which order, in so far as applicable, is made a part of this order.

7.-The authority herein granted will not become effective until Pittsburg Water Company has paid the fee prescribed by the Public Utilities Act.

8.-The authority herein granted to transfer property and issue bonds and stock shall apply only to such property as may be transferred and to such bonds and stock as may be issued on or before November 15, 1919.

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.

Alptember
~~August~~, 1919. Dated at San Francisco, California, this 6th day of

Erin O. Edgerton

Frank P. Owen

H. B. Boudige

Irving Martin

Commissioners.

See #63 ^{as} / 100

SEP 8
H. Materson