

ORIGINAL

Decision No. 814

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of
PACIFIC GAS AND ELECTRIC COMPANY,
a corporation, for an order of the
Railroad Commission of the State
of California approving the renewal of
certain promissory notes.

Application No. 650.

Charles P. Cutten for applicant.

THELEY, Commissioner.

OPINION.

This is an application of Pacific Gas and Electric Company for an interpretation of certain provisions of Section 52 of the Public Utilities Act and for an order approving the execution of certain promissory notes heretofore made and executed by said Company for the purpose of renewing other promissory notes of like amount and tenor. The notes referred to are as follows:

On October 25, 1912, applicant made and executed a promissory note in favor of General Electric Company for the sum of \$119,006.06, due and payable on November 24, 1912. New notes for the same amount were thereafter made and executed in favor of General Electric Company on November 25, 1912, December 24, 1912 and March 24, 1913, extending the time of payment of said note to December 24, 1912, March 24, 1913 and July 31, 1913, respectively.

On December 26, 1912, applicant made and executed its promissory note for the sum of \$100,000 in favor of Associated Oil Company, due and payable on February 24, 1913. This note was renewed by another promissory note of the same amount, made and executed on February 24, 1913.

On January 15, 1913, applicant made and executed a promissory note for the sum of \$100,000, also in favor of Associated Oil

Company, due and payable on March 16, 1915. On January 25, 1915, for some reason which applicant's witness was unable to state, this note was renewed by another promissory note for the same amount, also due and payable on March 16, 1915.

Applicant also refers to ten certain promissory notes in the sum of \$25,000, payable to the order of itself and endorsed and delivered to the Bank of California National Association, but it is unnecessary to refer further to these notes for the reason that they have been paid and the indebtedness evidenced thereby discharged.

The notes in favor of the Associated Oil Company were for oil which was used in operation, and the note in favor of the General Electric Company was to pay for material used both in construction and maintenance.

Applicant asks for the Commission's view as to whether the Commission's order is necessary in case of any of these notes, and if so, to make an order approving their execution.

Section 52 of the Public Utilities Act specifies the purposes for which public utilities may issue stocks and stock certificates and bonds, notes and other evidences of indebtedness, payable at periods of more than twelve months after the date thereof. The section provides that no utility shall issue such stocks, stock certificates, bonds, notes and other evidences of indebtedness, payable at periods of more than twelve months after the date thereof unless it shall first have secured from this Commission an order authorizing such issue. With reference to notes payable at periods of not more than twelve months after the date of issuance of the same, the section provides as follows:

"A public utility may issue notes, for proper purposes and not in violation of any provision of this act or any other act, payable at periods of not more than twelve months after the date of issuance of the same, without the consent of the commission, but no such note shall, in whole or in part, be refunded by any issue of stocks or stock certificates, or of bonds, notes of any term or character or any other evidence of indebtedness, without the consent of the commission."

It thus appears that the utilities were granted the affirmative right to issue notes for proper purposes and not in violation of

any provision of the Public Utilities Act or any other act, if these notes were payable at periods of not more than twelve months after the date of issuance of the same, without the consent of the Commission. The purpose of this provision is to enable utilities to secure short term loans on promissory notes and to take care of emergency matters without the necessity of applying to this Commission for an order of authorization. Before the Public Utilities Act was drawn, one of the members of the Public Service Commission of New York drew attention to the fact that under a similar provision in the public service commission law of New York, some utilities were giving notes for periods of less than twelve months and then refunding these notes by means of other notes also running less than twelve months, with the result that in this way their financial operations were being taken out from the jurisdiction of the Commission. In accordance with his suggestion, the Public Utilities Act of this State contains the following clause:

"But no such note shall, in whole or in part, be refunded by any issue of stocks or stock certificates, or of bonds, notes of any term or character or any other evidence of indebtedness, without the consent of the Commission." X

The purpose of this clause is to prevent the endless chain arrangement to which the New York commissioner referred. While a public utility may issue one note payable at a period of not more than twelve months after the date of issuance of the same, it may not issue another note to refund or take up the first note without having drawn the matter to the attention of the Commission and secured the usual order of authorization. I am not impressed by the argument that the word "refund" refers only to notes payable to payees who might be third parties and that it does not refer to a case in which a note is paid by means of a new note running to the same payee. I think the word clearly means that no note issued for a period of not more than twelve months without the consent of the Commission shall be refunded or taken^{up} by any note "of any term or character," whether running to the same payee or another payee.

I am accordingly of the opinion that on a proper interpretation of Section 52 of the Public Utilities Act, the Pacific

Gas and Electric Company should have applied for this Commission's authorization to issue such notes as were given in renewal of the first note in each case. It is evident that all the notes executed by the Pacific Gas and Electric Company were executed entirely in good faith and without an appreciation of the significance of the provisions of Section 52 of the Public Utilities Act hereinbefore referred to.

With reference to the prayer that this Commission make an order "approving the execution" by applicant of those promissory notes which were made and executed for the purpose of renewing other notes of like amount and tenor, I would say that I am satisfied that this Commission has no authority to give this specific relief.

Section 52 (d) of the Public Utilities Act provides in part as follows:

"All stock and every stock certificate, and every bond, note or other evidence of indebtedness, of a public utility, issued without an order of the commission authorizing the same then in effect shall be void."

A note as to which this Commission's authorization is necessary is absolutely void unless such authorization has been secured. It seems clear that this Commission has no power to make valid an act which is absolutely void. The Commission can, however, direct the applicant to cancel such notes as may have been issued without its authority and authorize it to execute new notes in lieu thereof, and I recommend that such authorization be given in this proceeding.

The Commission is now considering the promulgation of a General Order permitting renewals of promissory notes without first securing the consent of this Commission, provided that the ^{total} term of the original note and the notes given in renewal shall not exceed twelve months. Such an order would give to the public utilities somewhat greater freedom of action while at the same time not imperiling this Commission's authority over the finances of public utilities.

I submit herewith the following form of order:

O R D E R.

PACIFIC GAS AND ELECTRIC COMPANY having filed its application in the above entitled proceeding and a public hearing having been held thereon,

IT IS HEREBY ORDERED that said Pacific Gas and Electric Company is hereby authorized to execute and deliver its promissory notes as follows:

A promissory note in the sum of one hundred and nineteen thousand six and 8/100 (\$119,006.08) dollars, bearing interest at a rate not to exceed six (6%) per cent per annum, payable on or before October 25, 1913, in favor of General Electric Company, a corporation, to evidence the indebtedness which was represented by promissory note in the same amount executed on October 25, 1912, in favor of said General Electric Company.

A promissory note in the sum of one hundred thousand (\$100,000) dollars, bearing interest at a rate not to exceed six (6%) per cent per annum, payable on or before December 26, 1913, in favor of Associated Oil Company, to evidence the indebtedness which was represented by promissory note in the same amount executed on December 26, 1912, in favor of said Associated Oil Company.

A promissory note in the sum of one hundred thousand (\$100,000) dollars, bearing interest at a rate not to exceed six (6%) per cent per annum, payable on or before January 15, 1914, in favor of Associated Oil Company, to evidence the indebtedness which was represented by promissory note in the same amount executed on January 15, 1913, in favor of said Associated Oil Company.

Pacific Gas and Electric Company shall make return to this Commission showing the fact of the execution of such notes and the date and amount thereof and the other information called for by General Order No. 24, in so far as applicable.

This authorization shall apply only to promissory notes executed on or before the tenth day of August, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of July, 1913.

John M. Callahan

John H. ...

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Max Keller

Edwin O. Edgerton

Commissioners.