

ORIGINAL

Decision No. 993

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of the TULARE COUNTY POWER COMPANY, a corporation, for an order authorizing it to execute a trust deed and chattel mortgage to Charles J. Wrightsman, of Oklahoma, to secure the payment of twenty-two promissory notes dated \_\_\_\_\_, 1913, aggregating \$250,000.00, for a loan of \$200,000.00; to recall, cancel and destroy an issue of 600 first mortgage bonds of the value of \$500.00 each heretofore authorized by the Railroad Commission of the State of California under an Order dated February 20, 1913, Application No. 368, and to cause to be satisfied and released of record the mortgage dated January 2, 1913, made by the Tulare County Power Company to the Mercantile Trust Company of San Francisco securing payment of said bonds; and to sell 330 shares of the capital stock of the Tulare County Power Company at not less than par to assist in liquidating indebtedness of the company and in the extension of its transmission line to proposed customers.

Application No. 736.

A. H. Drew, representing Tulare County Power Company;  
 J. J. Dunn, representing C. J. Wrightsman.

LOVELAND, Commissioner.

O P I N I O N

Applicant, the Tulare County Power Company, is a corporation organized and existing under the laws of the State of California and having its principal place of business in the city of Lindsay, County of Tulare, State of California. Applicant was incorporated on June 10, 1910 with an authorized capital stock of \$1,000,000.00 divided into 10,000 shares of the par value of \$100.00 each, of which 2,500 shares were preferred, 7% cumulative, and 7,500 shares were common. Applicant is engaged in generating,

selling and distributing electric current for heat, light and power purposes in the said County of Tulsa.

Applicant first applied to this Commission on the 30th day of August, 1912 for an order authorizing it to mortgage its plant, system and property to Thomas C. Job to secure advances theretofore made and thereafter to be made to said company by said Thomas C. Job in the maximum amount of \$175,000.00, under Application No. 211, records of this Commission. At the time of filing said application, applicant filed with the Commission a certified copy of its Articles of Incorporation as required by law, and also furnished statement of its financial condition showing: (a) amount and kinds of stock authorized; (b) amount and kinds of stock issued and outstanding; (c) terms of preference of preferred stock; (d) statement of its other indebtedness; (e) amount of interest paid from date of organization to August 1, 1912; (f) detailed statement of earnings and expenditures from date of organization to August 1, 1912; and (g) copy of proposed mortgage.

This application was regularly heard and the Opinion and Order rendered under date of September 25, 1912.

Applicant later adopted a scheme of furnishing electric energy for heat, light and power purposes to its stockholders at cost and to certain other consumers at the rate prevailing in the territory served. To effect this scheme, the Articles of Incorporation were amended so that 5,500 shares of common stock were set aside and designated "consumers' common stock" and the owner and holder of each share thereof is entitled to the privilege of the use of one horsepower of electric energy at the actual cost of production. Certified copies of the amended Articles of Incorporation were filed with the Commission.

In granting the application of the Tulare County Power Company, under Application No. 211, in its Opinion the Commission said, with reference to applicant's arrangement to issue "consumers' common stock":-

"The Commission does not in this Opinion pass on the legality or advisability of this arrangement".

I am of the opinion that the Commission should take the same position with reference to this application and not pass upon the legality or advisability of applicant issuing consumers' stock.

It was developed by testimony at the hearing that, while the owners of consumers' stock were to receive power at \$36.00 per horsepower, that sum was not definitely determined as cost, but was to be a sum charged such owners of consumers' stock until it was demonstrated that it was less than cost. In other words, they are to pay cost for the power.

In its Order, the Commission provided that the mortgage executed by applicant to Thomas C. Job should be placed in escrow and not delivered to said Job until he had placed in the hands of the trustee in escrow the sum of \$125,000.00, which sum the said trustee was to pay to the creditors of the company, as of August 31, 1912, other than said Job.

This condition was not complied with and at a later date, to-wit: on January 1, 1913, applicant presented to this Commission Application No. 368 under which it asked for an Order authorizing it to issue, sell, hypothecate, pledge, transfer or otherwise dispose of its 6% gold bonds of the face value of \$300,000.00, said bond issue to be secured by a deed of trust to the Mercantile Trust Company of San Francisco of all of applicant's property. Applicant also asked that the Order of this Commission entered on the 25th day of September, 1912, under Application No. 211, whereby the property of applicant was mortgaged to Thomas C. Job, be vacated and set aside.

After a hearing, at which all of the circumstances connected with and surrounding applicant were carefully considered and investigated, this application was granted.

Being unable, owing to disturbed financial conditions, to sell its bonds, applicant again applied to the Commission on August 14, 1913 under Application No. 694, asking permission to issue to Thomas C. Job its promissory notes, face value of \$50,000.00, and to hypothecate, as security therefor, its 6% gold bonds issued under permission of the Commission under Application No. 368 in the sum of \$66,500.00; also Application No. 695, under which it asked permission to issue to Thomas C. Job its promissory note of the face value of \$3,243.82 and to hypothecate, as security therefor, eight of its 6% gold bonds of the par value, in the aggregate, of \$4,000.00. These applications were granted, except as to Application No. 695, which was dismissed.

Later, applicant asked for and was granted permission to hypothecate other bonds to secure indebtedness of John Roebbling & Sons, Hunt Mirk & Company, Allis Chalmers & Company, and other creditors.

The above is a brief but definite recital of the Tulare County Power Company's applications to this Commission and of the action of the Commission had thereon, and brings the matter down to the present time.

Under date of September 11, 1913, applicant filed with the Commission its Application No. 736, which is the application now under consideration.

I will now recite briefly the salient points of the present application.

As has been stated, the Tulare County Power Company found itself unable to sell its 6% gold bonds, authorized by the

Commission under Application No. 368, and was confronted with the necessity of finding other means of financing itself.

Its financial condition, as set forth in Exhibit "A", filed with and made a part of the present application, is substantially as follows:-

Value of property, about.....	\$450,000.00
Indebtedness.....	\$308,000.00
Due the Tulare County Power Company from sundry creditors, about.....	\$ 80,000.00
Yearly revenue above current expenses, something over.....	\$ 56,000.00

At this juncture, applicant interested Mr. C. J. Wrightsman, of Oklahoma, and after an exhaustive study of the situation by Mr. Wrightsman the following proposition is presented to the Commission at this time as Application No. 736:-

Mr. Wrightsman offers to loan applicant \$200,000.00 upon condition that applicant give to him its notes for \$250,000.00, one note for \$25,000.00 being payable in six months from date, another note for \$25,000.00 being payable in twelve months from date, and the remainder, represented by a note of \$200,000.00, being payable one year and six months from date, all of said notes being without interest save and except as some portion of the \$50,000.00 is considered interest, as will appear hereafter.

A condition precedent to the making of this loan by Mr. Wrightsman, is that the creditors of the Tulare County Power Company agree to accept the \$200,000.00 cash to be loaned by Wrightsman, the \$80,000.00 due from sundry creditors, and preferred stock of applicant in the sum of \$32,500.00 in full settlement of their accounts, and to release applicant from all further liability, with the understanding that the collection of the accounts due applicant is to be handled by a committee of creditors to which committee shall be issued the stock of applicant to the amount of \$32,500.00, and after the \$200,000.00 and amounts collected and

amounts realized from the sale of the \$32,500.00 of stock have been applied to the discharge of applicant's indebtedness, any surplus which the creditors' committee may have will be returned to applicant.

Applicant has asked to amend its application by asking permission to issue said preferred stock in the sum of \$32,500.00 to thus assist in retiring its current indebtedness.

At the time Application No. 368, under the decision in which the Tulare County Power Company was given permission to issue bonds, as recited above, was under consideration, the Commission made such investigation of applicant's financial condition as satisfied it that said bond issue should be granted, being a part of the Order in that application that the proceeds of said bonds were to be spent in adding to the value of the property.

The Commission has not made further investigation of the financial condition of the Tulare County Power Company while considering its present application, for the reason that a careful investigation was made by Mr. Wrightsman before he decided to loan applicant the \$200,000.00, as above recited.

As additional security for his loan of \$200,000.00, Mr. Wrightsman demanded that the stockholders of the Tulare County Power Company should, individually and collectively, sign a contract guaranteeing the payment of the notes aggregating \$250,000.00 to be given by the company to Mr. Wrightsman for the loan of the \$200,000.00. In securing this contract from the farmers, Mr. Wrightsman employed Mr. C. E. Bush who spent about three or four weeks visiting the stockholders of the Tulare County Power Company, and Mr. Bush reported to this Commission that, in securing the signatures of one hundred and seventy-five stockholders, but one man refused to sign the note.

It must be borne in mind that while Mr. Wrightsman loans applicant but \$200,000.00 and takes applicant's notes for \$250,000.00, secured by all of its property and by the contract of guarantee of the stockholders, as above set forth, the \$50,000.00 to be paid Mr. Wrightsman in excess of the amount he loans is not altogether a bonus, but represents the interest on the \$200,000.00 and also reimburses Mr. Wrightsman for services performed by him or by Mr. Bush or Mr. Hughes for him in bringing about a reorganization of the company and securing the consent of the creditors to the plan, as outlined above.

While Mr. Wrightsman's terms may seem a little severe, I am strongly of the opinion that the Tulare County Power Company is indeed fortunate in finding someone at the present juncture of its affairs to do what Mr. Wrightsman is doing.

Applicant asks that the deed of trust and mortgage heretofore given to the Mercantile Trust Company of San Francisco to secure its bond issue, granted under Application No. 368, be cancelled and discharged of record. This is a matter outside the jurisdiction of this Commission except that it can and will make this Order conditional upon such being done.

It was testified at the hearing that applicant, in the near future, would assess its stock for the purpose of securing funds to build important extensions which would result in increased revenue to applicant.

I believe and find as a fact that it will be of advantage to the Tulare County Power Company to consummate this arrangement with Mr. Wrightsman and that the interests of the stockholders and consumers of the Tulare County Power Company will be best served by permitting this arrangement to be completed.

I recommend the following Order:-

ORDER

The Tulare County Power Company, a corporation, having applied to this Commission for permission to recall, cancel and destroy an issue of 600 first mortgage bonds of the value of \$500.00 each, heretofore authorized by the Railroad Commission of the State of California under an Order dated February 20, 1913, and to execute to Charles J. Wrightsman, of Oklahoma, twenty-two promissory notes, aggregating \$250,000.00, for a loan of \$200,000.00, and to secure said notes by a mortgage or deed of trust of all of its property, and to cause to be satisfied and released of record the mortgage dated January 2, 1913 made by the Tulare County Power Company to the Mercantile Trust Company of San Francisco securing the payment of the bonds above referred to; and to issue three hundred and thirty shares of its capital stock, to be sold at not less than par, to assist in the discharge of current indebtedness of applicant;

And a hearing having been regularly held, and the matters and things connected with the application thoroughly investigated, as set forth in the preceding Opinion;

And the Commission having found as a fact that it will be to the advantage of applicant, and also to the advantage of its consumers, to consummate said deal with said Wrightsman;

IT IS HEREBY ORDERED: That the Tulare County Power Company be and it is hereby authorized:

(1) To execute twenty-two promissory notes, aggregating \$250,000.00, to C. J. Wrightsman, for a loan of \$200,000.00, \$25,000.00 of said amount being due and payable in six months from date, \$25,000.00 in twelve months from date, and the remainder of \$200,000.00 being due and payable one year and six months from date, all of said notes to be without interest save and except some portion of the \$50,000.00 considered interest, as set



forth in the preceding Opinion; and to secure said loan by a mortgage or deed of trust of all of its property to C. J. Wrightsman, or to trustees for said C. J. Wrightsman, copy of said mortgage or deed of trust to be filed with and approved by this Commission previous to its effective date;

(2) To cause to be satisfied and released of record the mortgage dated January 2, 1913 made by the Tulare County Power Company to the Mercantile Trust Company of San Francisco to secure the payment of the bonds above mentioned;

(3) To issue three hundred and thirty shares of its capital stock to be sold at not less than par to assist in liquidating current indebtedness of applicant;

(4) IT IS FURTHER ORDERED: That the Order resulting from the hearing of Application No. 368 be cancelled and rescinded and that this Order shall not become effective until applicant has presented to the Commission evidence that the deed of trust and mortgage given to the Mercantile Trust Company of San Francisco to secure the bond issue, granted under Application No. 368, has been discharged and cancelled of record.

Tulare County Power Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of said stock, bonds and notes hereby authorized to be issued and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission, stating the sale or disposition of said stock, bonds and notes during the preceding month, the terms and conditions of such sale or other disposition and the application of the money realized from such sale or disposition, all in accordance with this Commission's General Order No. 24, which, in so far as applicable, is made a part of this Order.

The authority herein granted to issue stock, bonds and notes shall apply only to stock, bonds and notes issued prior to September 30, 1914.

The effectiveness of this Order is conditioned on the prior payment of the fee specified in Section 57 of the Public Utilities Act.

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 6<sup>th</sup> day of October, 1913.

John W. Eschleman  
W. H. Loveland  
Alex. Gordon  
E. Edgerton

Commissioners.