

IBM
Decision No. 23689

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
LEONARD P. WIKOFF
for authority to assign and transfer
to Desert Valley Utilities, a corpora-
tion, a certificate of public conven-
ience and necessity to exercise certain
rights and privileges under Ordinance
437 of the County of San Bernardino
granted by Decision No. 29212 and 29531,
Application No. 20642 of said Commis-
sion; and of said Desert Valley Utili-
ties for authority to issue and sell
stock.

ORIGINAL

Application No. 21060

Paul Overton, for applicant.

BY THE COMMISSION:

O P I N I O N

In this application, as amended at the hearing had on April 1, 1937 the Commission is asked to enter its order authorizing Leonard P. Wikoff to transfer to Desert Valley Utilities a certificate of public convenience and necessity which the Commission, it is said, has heretofore granted to him, and authorize Desert Valley Utilities to issue 340 shares of common stock for a total consideration of \$8,505.00 and 500 shares of its preferred stock at not less than a net price of \$95. per share.

The Desert Valley Utilities is a corporation organized under the laws of California. It has an authorized stock issue of 3,000 shares, without nominal or par value, divided into 1,000 shares of preferred stock and 2,000 shares of common stock. The articles of incorporation accord all shares of stock equal voting rights. The holders of shares of preferred stock are entitled to receive from the surplus or net profits arising from the business of the corporation a fixed yearly dividend of \$6. per share, payable quarterly before any dividend shall be set apart or paid on the common stock. The divi-

dends on the preferred stock are cumulative. In the event of liquidation, dissolution or winding up, whether voluntary or involuntary, the holders of the preferred shares of stock shall be entitled to be paid \$100. per share and the unpaid dividends accrued thereon before any payments may be made to the holders of common stock. The company reserves the right to redeem the preferred stock on 30 days notice on or after January 1, 1939 at \$100. per share plus cumulative unpaid dividends.

The Commission by its order in Decision No. 29212 dated October 26, 1936 in Application No. 20642, as amended by Decision No. 29531, dated February 13, 1937, granted Leonard P. Wikoff a certificate of public convenience and necessity to exercise the rights and privileges pertaining to the construction, maintenance and operation of facilities used in the furnishing of electric service, granted to Leonard P. Wikoff, his successors and assigns by the Board of Supervisors of San Bernardino County, State of California, under Ordinance 437, dated August 3, 1936. The authority granted by the Commission, among other things, was subject to the condition that it will become effective when applicant has filed with the Railroad Commission a statement showing that the money needed to pay the cost of acquiring and constructing the property necessary to establish the electric service mentioned in the decision was on deposit with a bank in the name of Leonard P. Wikoff and may be withdrawn only for the purpose of paying for said electric plant. Such a statement has not been filed with the Commission nor has Leonard P. Wikoff complied with certain other conditions of said order. In our opinion the authority granted by the order in Decision No. 29212 dated October 26, 1936, as amended, has not become effective and he therefore has no certificate of public convenience and necessity to transfer. Subject to the provisions of the order following, we will grant Desert Valley Utilities a certificate of public convenience and necessity.

In Exhibit C applicant reports that at the time of the hearing on Application No. 20642 Leonard P. Wikoff estimated the cost of the electric plant at \$35,249. Because of changes in the design and location of the proposed plant and the increase in material prices he now in said Exhibit C estimates the cost at \$39,101.00. At the hearing had on the application Mr. Wikoff testified that because of further changes he had under consideration the amount of cash required might be increased from \$31,596.00, as shown in Exhibit C, to about \$40,596.00. In that case the total cost of the plant would be \$49,091.00 instead of \$39,101.00, as reported in Exhibit C.

Desert Valley Utilities asks permission to issue 340 shares of common stock to Leonard P. Wikoff to reimburse him for \$8,505. of expenditures incurred by him. This stock would be issued on the basis of \$25. per share. The \$8,505, includes an allowance of \$5,000. for the lot described in Exhibit F and \$3,505. for expenditures incurred by him or compensation allowed him.

The lot in question fronts on the main highway for a distance of 75 feet and is about 291 feet deep. While we do not question the value of the lot we feel that the entire lot is not all needed for the construction and the operation of the electric plant, which is the subject matter of this application. The investment of \$5,000. in land by this utility is at this time not warranted. The electric plant and appurtenances should be located on the rear of the lot which would permit Leonard P. Wikoff to retain or dispose of the front portion of the lot having a dimension of 75' x 130'.

Applicant proposes to raise all the cash it needs through the sale of preferred stock at a net price of \$95. per share. Presumably the stock will be sold at \$100. per share to the public. The testimony shows that property owners in 29 Palms are interested in the construction of the electric plant and may make available to applicant through the purchase of stock an amount ranging from \$10,000. to \$15,000. It is urged that the common stock is not worth more than \$25. per share. We have here a situation calling for the invest-

ment of some \$40,000. which applicant proposes to obtain through the issue of common and preferred stock. The enterprise has not been constructed and the results of its operation not established.

The basis on which applicant proposes to sell its stock from a practical standpoint destroys the equality of voting rights set up in its articles of incorporation. It is little satisfaction to a stockholder to tell him that the articles of incorporation provide for equal voting rights, when as a matter of fact, a holder of preferred stock who pays \$100. per share obtains one vote, while \$100. invested in common stock entitles the holder to four votes. It is suggested however that the purchaser of the preferred stock is not only accorded the right to vote, but is given certain prior rights. True, he obtains a prior right to dividends and in case of liquidation a right to the return of \$100. per share before any money is distributed to the holders of common stock. But with these rights accorded him he still retains the status of a stockholder and not the position of a creditor to enforce any claim, if he receives no dividends.

Disregarding the disparity in the voting rights, we feel that applicant's proposed set up is unsound in that not enough of the funds needed by applicant are obtained through the issue of common stock. We think at least fifty percent initially invested in applicant's project should be obtained from the issue of common stock. The order will provide that before applicant undertakes the construction of any of its plant it have on deposit with a bank or banks not less than \$15,000. realized through the issue of common stock on the basis of \$25. per share. The order herein will authorize applicant to issue 1960 shares of its common stock. Of said shares 240 may be issued to Leonard P. Wikoff in payment for part of the lot referred to herein and to reimburse him for the expenditures incurred by him and compensate him for services rendered. The order will not authorize applicant to issue any preferred stock. After applicant has realized \$15,000. from the issue and sale of common stock, and has said

sum on deposit in a bank or banks, the Commission upon request will consider making a supplemental order authorizing applicant to proceed with the construction of its plant. At that time it will also consider the manner in which the additional money needed by applicant should be raised if the same cannot be obtained through the issue of common stock. If within the time fixed by the order applicant is not in a position to proceed with the construction of its plant, the authority herein granted will become null and void. In that event, the money on deposit shall be returned to the purchasers of stock, less an allowance for commission and expenses of not more than \$2.50 per share.

O R D E R

The Commission having been asked to enter its order authorizing Leonard P. Wikoff to assign and transfer the certificate of public convenience and necessity, referred to in the foregoing opinion, to Desert Valley Utilities and authorizing Desert Valley Utilities to issue stock in the amounts indicated in said foregoing opinion, a public hearing having been held before Examiner Fankhauser and the Commission having considered the evidence submitted at such hearing and it being of the opinion that inasmuch as Leonard P. Wikoff has not complied with the conditions precedent in the order in Decision No. 29212, dated October 26, 1936, as amended, the certificate granted by such order has not become effective and therefore said Leonard P. Wikoff has acquired no rights that can be assigned and transferred by him to said Desert Valley Utilities; that the Commission in this proceeding should grant a certificate of public convenience and necessity to said Desert Valley Utilities subject to the provisions of this order and that it should authorize said Desert Valley Utilities to issue not exceeding 1960 shares of its common capital stock, that the issue of said stock is reasonably required by applicant for the purposes herein stated and that the expenditures for such purposes are not in whole or in

part reasonably chargeable to operating expenses or to income, therefore,

IT IS HEREBY ORDERED that a certificate of public convenience and necessity to exercise the rights and privileges pertaining to the construction, maintenance and operation of the facilities used in the furnishing of electric service granted to Leonard P. Wikoff, his successors and assigns, by the Board of Supervisors of San Bernardino County, State of California, under Ordinance No. 437 dated August 3, 1936 be, and the same is hereby granted to Desert Valley Utilities, subject to the following conditions and not otherwise:-

1. The authority herein granted will become effective when applicant has filed with the Railroad Commission a statement showing that at least \$15,000. of the cash acquired to pay the cost of acquiring and constructing the property necessary to establish the electric service herein mentioned is on deposit with a bank in the name of Desert Valley Utilities, which may be withdrawn only for the purpose of paying for said electric plant or for the purpose of returning all or part of said moneys to the purchasers of applicant's common stock.

2. The authority herein granted shall apply only within that particular area specified in Ordinance No. 437 of San Bernardino County as follows:-

Township 1 North, Range 8 East.
Township 1 North, Range 9 East.
Township 1 North, Range 10 East.
Township 1 South, Range 8 East.
Township 1 South, Range 9 East.
Township 1 South, Range 10 East.

San Bernardino Base and Meridian, in the community generally known as 29 Palms, provided however that the Railroad Commission may hereafter by appropriate orders revoke or limit as to territory not then served by Desert Valley Utilities the authority herein granted.

3. Desert Valley Utilities shall file with the Railroad Commission in quadruplicate on or before July 31, 1937 and prior to the establishment of service, a tariff or tariffs constructed in accor-

dance with the requirements of the Railroad Commission's general orders and containing rates which in volume and effect shall be the same as or no higher than the Palm Springs rates of The Nevada California Electric Corporation's schedules L-1 for lighting service, C-5 for heating and cooking service and P-1 for power service, except for extremely large installations, and rules and regulations similar to those of The Nevada California Electric Corporation and satisfactory to the Railroad Commission.

4. Desert Valley Utilities shall file on or before July 31, 1937 a stipulation duly authorized by its Board of Directors in which it agrees that it, its successors and assigns will never claim before the Railroad Commission or any other public body a value for the franchise above referred to in excess of the actual cost thereof, which cost shall be set forth in said stipulation.

5. The authority herein granted shall lapse and become null and void if not exercised on or before July 31, 1937.

IT IS HEREBY FURTHER ORDERED that Desert Valley Utilities be, and it is hereby, authorized to issue and sell on or before July 31, 1937 not exceeding 1960 shares of its common capital stock on the basis of not less than \$25. per share, for the purpose of acquiring properties and paying the cost of constructing the electric plant referred to in this application, and pay expenses incident to the issue and sale of said stock, which expenses shall not exceed \$2.50 per share; said Desert Valley Utilities shall deposit all of the net proceeds realized from the sale of said stock in a bank or banks until it has on deposit in said bank or banks at least \$15,000., at which time the Commission will consider a supplemental application for permission to expend said \$15,000. and modify this order in the event said Desert Valley Utilities is unable to raise, through the sale of common stock, sufficient funds to finance the construction of its electric plant.

IT IS HEREBY FURTHER ORDERED that Desert Valley Utilities shall keep such record of the issue, sale and delivery of the stock

and bonds herein authorized and of the disposition of the proceeds as will enable it to file on or before the 25th day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order insofar as applicable, is made a part of this order.

DATED at San Francisco, California, this 20th day of April, 1937.

Leon A. Whittell
James R. Brown
Ray DeValentine
Ray & Wiley
Commissioners.