

Decision No. 31363

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SOUTHERN OREGON GAS CORPORATION,
CALIFORNIA UTILITIES COMPANY,
NEEDLES GAS AND ELECTRIC COMPANY
and
WEAVERVILLE ELECTRIC COMPANY,
for an order (a) authorizing California
Utilities Company, Needles Gas and
Electric Company and Weaverville Elec-
tric Company to merge with and into
Southern Oregon Gas Corporation under
and pursuant to the proposed Agreement
of Merger hereinafter referred to; (b)
authorizing Southern Oregon Gas Corpora-
tion (under its proposed new name of
"California-Pacific Utilities Company")
to issue shares of its capital stock as
provided in said proposed Agreement of
Merger and to assume the obligations
of said California Utilities Company,
Needles Gas and Electric Company and
Weaverville Electric Company pursuant
to said Agreement of Merger; (c) auth-
orizing Southern Oregon Gas Corporation
(under its proposed new name of "Cali-
fornia-Pacific Utilities Company") to
issue \$475,000. principal amount of its
First and Refunding Mortgage Bonds,
Series A, due 1958, and to make, execute
and deliver its Trust Indenture dated as
of January 1, 1936, to Bank of America
National Trust and Savings Association
and W. J. Kieferdorf, as Trustees; and
(d) approving, pursuant to Section 52 of
the Public Utilities Act the fairness of
the terms and conditions of the issuance
and exchange of such securities.

ORIGINAL

Application No. 22230

Orrick, Dahlquist, Neff & Herrington, by T.W. Dahlquist,
for applicants.

BY THE COMMISSION:

O P I N I O N

In this application the Railroad Commission is asked to make
its order:-

1. Authorizing California Utilities Company, Needles Gas and
Electric Company and Weaverville Electric Company to merge with and
into Southern Oregon Gas Corporation under and pursuant to the pro-

posed Agreement of Merger, dated September 13, 1938, filed in this proceeding as "Exhibit A"; and

2. Authorizing Southern Oregon Gas Corporation to issue shares of its capital stock, in the aggregate par value of \$1,223,000.00, as provided in said Agreement of Merger, and to assume the obligations of California Utilities Company, Needles Gas and Electric Company and Weaverville Electric Company pursuant to said agreement; and

3. Authorizing Southern Oregon Gas Corporation to issue \$475,000. principal amount of its First and Refunding Mortgage Bonds, Series A, 5%, due 1958, and to make, execute and deliver its Trust Indenture dated as of January 1, 1938, to Bank of America, National Trust and Savings Association and W. J. Kieferdorf, as Trustees; and

4. Approving the fairness of the terms and conditions of the issuance and exchange of such securities.

The four companies, applicants in this proceeding, are corporations organized under the laws of the State of California.

Southern Oregon Gas Corporation, hereinafter sometimes called the "Surviving Corporation", is authorized to carry on a public utility business in the States of Oregon and Nevada and now owns and operates public utility gas systems in Klamath Falls, Ashland, Medford, Grants Pass and Roseburg, Oregon, and vicinity. It is not now engaged in business in the State of California. For the twelve months ending August 31, 1938 it reports operating revenues of \$124,877.48.

California Utilities Company, hereinafter sometimes called "Utilities", now owns and is engaged in operating the public utility electric distribution system at Susanville, California, and vicinity and the public utility water distribution systems at Susanville and Benicia, California, and vicinity. For the twelve months ending August 31, 1938, it reports total operating revenues of \$170,299.39.

Needles Gas and Electric Company, hereinafter sometimes called "Needles", now owns and is engaged in operating the public utility

electric, gas and telephone systems at Needles, California, and vicinity. It is qualified to do business in the State of Nevada and has obtained from the Public Service Commission of Nevada a certificate of public convenience and necessity to furnish electric energy to the El Dorado Mining District in Clark County, Nevada. For the twelve months ending August 31, 1938 "Needles" reports total operating revenues of \$143,704.88.

Weaverville Electric Company, hereinafter sometimes called "Weaverville", now owns and is engaged in operating the public utility electric distribution system in Weaverville, California, and vicinity. For the twelve months ending August 31, 1938, it reports operating revenues of \$19,604.28.

Applicants are associate companies of the Republic Electric Power Corporation holding system, of which Republic Electric Power Corporation, hereinafter sometimes called "Republic", a corporation organized under the laws of Delaware, is the registered holding company. According to the application it owns the outstanding stocks of certain companies which may be classified as follows:-

1. Pacific Coast companies:
Southern Oregon Gas Corporation.
California Utilities Company.
Needles Gas and Electric Company.
Weaverville Electric Company.
2. Oklahoma companies:
Apache Gas Company.
Gas Transport Company.
3. Non-utility company:
Needles Steam Laundry Company.

The laundry plant of Needles Steam Laundry Company is not presently operated by it, but is under lease to a third party.

The Republic Mutual Service Company, a California corporation, is an associate company. It is the mutual service company of the Republic Electric Power Corporation holding company system. It will be dissolved if the Agreement of Merger becomes effective.

The present proceeding is one step in a program looking toward the elimination of the holding company system and the dissolution of Republic to enable Republic and other parties to comply with the provisions of the Utility Holding Company Act of 1935.

In brief, the program contemplates the following steps:-

1. The merger of the four Pacific Coast companies into Southern Oregon Gas Corporation whose name thereafter will be changed to California-Pacific Utilities Company.
2. The issue by the Surviving Corporation of \$1,223,000. of stock, the delivery of such stock to Republic and the cancellation by Republic of certain indebtedness due it by the companies, parties to the merger, and the issue of \$475,000. of bonds.
3. The transfer by Republic to the Surviving Corporation of the stock or properties of the Weaverville Ice Plant and Needles Steam Laundry Company and all other assets and securities, held by Republic, including its current assets, after offsetting its current liabilities, but excluding the shares and notes of its utility subsidiaries.
4. The sale, when arranged, by Republic, of the Oklahoma Properties to outside interests.
5. The transfer to Niagara Share Corporation of Maryland of the preferred stocks (\$1,094,000. par value) and of the \$475,000. of bonds now to be issued by the Surviving Corporation in payment of amounts due Niagara Share Corporation of Maryland by Republic and applicants.
6. The distribution of the common stock (\$129,000. par value) of the Surviving Corporation to the holders of the outstanding stock⁽¹⁾ of Republic and the dissolution of Republic and Republic Mutual Service Company.

(1) Republic has outstanding \$129,000. of common stock of the par value of \$20. a share which is equivalent to the common stock now to be issued by the Surviving Corporation.

At the conclusion of the program all of the Surviving Corporation's preferred stocks and its bonds will be held by Niagara Share Corporation of Maryland (2) and all of its common stock by individuals, now the stockholders of Republic, of whom there are approximately fifty.

It is planned to make the merger of the four Pacific Coast companies effective as of January 1, 1938. As of that date applicants report outstanding-

Capital stock-			
Surviving Corporation-preferred 7%	\$125,000.00		
-common	<u>250,000.00</u>	\$375,000.00	
Utilities		216,500.00	
Needles		100,000.00	
Weaverville		<u>10,000.00</u>	
	Total stock		<u>\$701,500.00</u>
Long term debt-			
Surviving corporation		\$ 7,027.70	
Utilities		103,000.00	
Needles		<u>156,500.00</u>	
	Total long term debt		<u>\$266,527.70</u>
Due associated company-			
Surviving Corporation		\$375,699.42	
Utilities		408,793.08	
Needles		166,518.69	
Weaverville		<u>26,027.77</u>	
	Total due associated company		<u>\$977,038.96</u>
Notes payable			<u>\$ 55,000.00</u>

(The notes include \$50,000. due Niagara Share Corporation of Maryland and \$5,000. due Bank of America, National Trust and Savings Association.)

The reorganization program provides for the cancellation of all the amounts due the associated company except notes of \$425,000. With the merger of the properties the Surviving Corporation will take possession of all the plants, systems, rights, franchises and other

(2) Niagara Share Corporation of Maryland is not affiliated with Republic or applicants. Its position appears to be that of a creditor only.

assets of Utilities, Needles and Weaverville, and will assume all the remaining obligations. The outstanding stocks of Utilities, Needles and Weaverville will be cancelled, leaving outstanding the \$375,000. of stock of the Surviving Corporation.

Thereafter the Surviving Corporation plans to issue \$475,000. of new first and refunding mortgage 5% bonds in payment of the \$425,000. of remaining indebtedness due Republic and of the \$50,000. of notes due Niagara Share Corporation of Maryland and to issue its preferred and common stocks in the total amount of \$1,223,000. in place of its \$375,000. of stock then to be outstanding.

A pro forma balance sheet, as of December 31, 1937, giving effect to the merger of the properties and the proposed issues of securities, filed as "Exhibit H" is as follows:-

<u>ASSETS AND OTHER DEBITS</u>		
Utility plant		\$2,228,843.95
Other investments:		
Other physical properties	\$ 5,450.23	
Investments in securities	7,448.31	
Republic Mutual Service Co.	8,000.00	
Sinking fund	822.87	
	<u>21,721.41</u>	21,721.41
Current and accrued assets:		
Cash	\$14,131.67	
Notes receivable	70,883.13	
Accounts receivable	117,324.41	
Materials and supplies	54,671.35	
Prepayments	10,149.10	
	<u>267,159.66</u>	267,159.66
Deferred charges:		
Unamortized debt discount and expense	\$ 4,730.42	
Other	4,234.82	
	<u>8,965.24</u>	8,965.24
	<u>Total assts and other debits</u>	<u>\$2,526,690.26</u>

<u>LIABILITIES AND OTHER CREDITS</u>		
Capital stock:		
5% first preferred stock	\$425,000.00	
5% second preferred stock	669,000.00	
	Sub-total	\$1,094,000.00
Common stock	<u>129,000.00</u>	<u>\$1,223,000.00</u>

Long term debt:		
First and refunding mortgage bonds, 5%, due 1958	\$ 475,000.00	
First mortgage bonds, 7%, due 1944	156,500.00	
First mortgage note, 6%, due 1938	88,000.00	
Purchase money debt, 5%, due 1938-41	15,000.00	
Miscellaneous	<u>7,027.70</u>	\$ 741,527.70
Current and accrued liabilities:		
Notes payable	\$ 5,000.00	
Accounts payable	73,780.15	
Customers' deposits	8,703.98	
Taxes accrued	11,940.11	
Interest accrued	1,476.23	
Other	<u>1,082.16</u>	101,982.63
Deferred credits		6,407.75
Reserves:		
Depreciation	\$ 435,813.88	
Other	<u>7,307.56</u>	443,121.44
Contributions in aid of construction		4,058.48
Surplus		<u>6,592.26</u>
Total liabilities and other credits		<u>\$2,526,690.26</u>

For the year 1937 the four companies reported total operating revenues of \$440,215.82, operating expenses of \$332,449.50, leaving a net operating revenue of \$107,766.32, and net profit after inclusion of interest and other income items, of \$51,007.84. Because of the cancellation of some of the indebtedness due Republic, which carries interest at the rate of 5% per annum, it is reported that the fixed charges as a result of the merger and reorganization, will be decreased by the sum of \$16,866.69.

Exhibit I contains a pro forma income statement for the year 1937, giving effect to the reorganization, as follows:-

Operating revenues:		
Electric	\$226,276.93	
Gas	143,897.78	
Water	61,288.70	
Telephone	8,752.41	
Ice plant	<u>1,586.37</u>	\$441,802.19
Operating expenses		<u>332,449.50</u>
Net operating revenue		\$109,352.69
Other income		<u>4,453.18</u>
Gross income		\$113,805.87
Income deductions:		
Interest on long term debt	\$ 40,834.70	
Other interest	564.79	
Amortization of debt discount and expense	683.88	
Miscellaneous	<u>3,847.97</u>	45,931.34
Net income		<u>\$ 67,874.53</u>

The companies' earnings for 1938 are in excess of their earnings for 1937.

Southern Oregon Gas Corporation at present has an authorized capital stock of \$800,000., consisting of \$300,000. of 7% preferred stock and \$500,000. of common stock, divided into shares of the par value of \$100. each. With the merger of the properties, it is proposed to re-classify and to increase the authorized capital stock so as to provide for amounts and classes of stock as follows:-

<u>Class</u>	<u>Shares</u>	<u>Par Value</u>	<u>Total</u>
First preferred	4,250	\$100.	\$425,000.
Second preferred	6,690	100.	669,000.
Common	<u>39,900</u>	20.	<u>798,000.</u>
Total	<u>50,840</u>		<u>\$1,892,000.</u>

The proposed articles of incorporation provide that the holders of the first preferred shares shall be entitled to receive dividends at the rate of \$5. per share per annum, which shall be cumulative from January 1, 1940. Subject to the prior rights of the holders of the first preferred shares, the holders of the second preferred shares shall be entitled to receive dividends at the rate of \$5. per share per annum which shall be cumulative from January 1, 1948, dividends on both classes to be payable quarterly. The shares of the first preferred and of the second preferred stocks may be redeemed at any time on any dividend payment date at the option of the company at \$105. per share plus all accrued dividends for the first preferred shares and at \$100. per share plus all accrued dividends for the second preferred shares. The holders of the second preferred shares on December 15 in the years 1938 to 1947, both inclusive, and thereafter on any quarterly dividend payment date, may convert their shares into full paid and non-assessable common shares at the rate of five common shares (\$20. par value each) for each second preferred share of the par value of \$100.

The proposed articles of incorporation further provide that no holder of any class of preferred shares shall have any voting power unless certain defaults occur in the payment of cumulative dividends. In that event it is provided that whenever after January 1, 1940 and as often as cumulative dividends aggregating at least four quarterly dividend payments on the first preferred shares at the time outstanding shall be in default, the holders of the first preferred shares at their option, if they elect to do so, shall be entitled, voting as a class, to the exclusion of the shares of all other classes, to vote for and elect a majority and no more of the directors. Whenever after January 1, 1948 and as often as cumulative dividends aggregating at least four quarterly dividend payments on the second preferred shares at the time outstanding shall be in default, the holders of the second preferred shares at their option shall be entitled, if they elect to do so, to exercise voting powers, as set forth in the proposed amended Articles of Incorporation.

It is reported that Niagara Share Corporation of Maryland, which will acquire all the preferred shares of the Surviving Corporation now to be issued, in order to avoid being classed as a holding company, does not desire the Articles of Incorporation of the Surviving Corporation to grant voting powers to the preferred shares, except in the event of default. It is proposed, if hereafter the first preferred shares and/or the second preferred shares are no longer held by Niagara Share Corporation of Maryland, or a successor or successors, but are held by and for the benefit of three or more persons, that the Surviving Corporation shall forthwith amend its Articles of Incorporation so as to provide that voting rights may be exercised forthwith and immediately upon the happening of a default in the payment of dividends (instead of waiting for default in four quarterly dividend payments) and without the necessity of calling or holding any special meeting of the holders of such shares.

We are of the opinion that if and when Niagara Share Corporation of Maryland disposes, in any manner whatsoever, of any or all of the preferred stocks of the Surviving Corporation, its articles of incorporation should be amended in the manner just indicated. We are further of the opinion that in the event the Surviving Corporation defaults in the payment of dividends on both or either class of preferred stocks, after part or all of such stocks have been transferred by the Niagara Share Corporation of Maryland, the said articles of incorporation should be amended so as to grant the owners of the preferred stocks five votes for each share of preferred stock owned.

If the surviving corporation is unable to pay dividends on its preferred stocks, we feel that the owners of such stocks should have the same voting privilege in relation to their investment as is extended to owners of common stock. Ordinarily the Commission does not favor the issue of non-voting preferred stocks. Because of the special circumstances giving rise to the agreement of merger mentioned herein and the issue of preferred stocks thereunder, we will permit the issue of such stocks as provided in the following order.

As indicated, the Surviving Corporation will own and operate in California a public utility water plant in Benicia and vicinity, a public utility electric plant in Weaverville and vicinity, a public utility electric and a water plant in Susanville and vicinity and a public utility electric, a gas and a telephone plant in Needles and vicinity. These various utility plants are not inter connected. The record shows that the Surviving Corporation will on its books segregate its plant investment, its operating revenues and its operating expenses to the several plants.

The Surviving Corporation on September 19, 1938 filed a copy of its proposed Mortgage of Chattels and Trust Indenture, dated as of

January 1, 1938. The instrument is in satisfactory form except that we believe it should be amended so as to permit sinking fund payments under Section Fourteen(14) to be regarded as a credit under Section Forty-four (44).

O R D E R

Application having been filed with the Railroad Commission for the authority indicated in the foregoing opinion, a public hearing having been held and the Commission being of the opinion that the application should be granted, as herein provided, that the terms and conditions of the issue and exchange of the stocks and bonds as proposed and authorized herein are fair and reasonable, that the money, property or labor to be procured or paid for through the issue of said stocks and bonds is reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income, and that if the agreement of merger mentioned hereinafter is consummated, the authority herein granted to Southern Oregon Gas Corporation may be exercised by it under its new name "California-Pacific Utilities Company",

IT IS HEREBY ORDERED as follows:-

1. California Utilities Company, Needles Gas and Electric Company and Weaverville Electric Company may, after the effective date hereof and prior to January 31, 1939, subject to the provisions of this order, merge with and into Southern Oregon Gas Corporation under and pursuant to the terms of the Agreement of Merger, dated September 13, 1938, filed in this proceeding as Exhibit A.

2. If said Agreement of Merger is consummated, Southern Oregon Gas Corporation shall assume the obligations of California Utilities Company, Needles Gas and Electric Company and Weaverville Electric Company, as provided in said Agreement of Merger.

3. Southern Oregon Gas Corporation may, after the effective date hereof and prior to January 31, 1939, subject to the provisions of this order, issue not exceeding \$425,000.00 par value of its first preferred stock, \$669,000.00 of its second preferred stock and \$129,000.00 of its common stock in exchange for its preferred and common stock now outstanding and in accordance with the terms and conditions of said Agree-

ment of Merger.

4. Southern Oregon Gas Corporation, after said Agreement of Merger has become effective, may execute a Mortgage of Chattels and Trust Indenture dated as of January 1, 1938, in or substantially in the same form as that filed in this proceeding on September 19, 1938, amended as indicated in the foregoing opinion, provided that the authority herein granted is for the purpose of this proceeding only and is given only insofar as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of said instrument as to such other legal requirements to which it may be subject.

5. After the execution of said trust indenture and prior to January 31, 1939, Southern Oregon Gas Corporation may issue not exceeding \$475,000.00 of its First and Refunding Mortgage Bonds, Series A, 5%, due 1953, in payment of indebtedness of like amount.

6. Southern Oregon Gas Corporation shall keep its records in such manner so as to show for each separate utility plant in California the operating revenues, operating expenses and fixed capital segregated to the primary accounts, where applicable, provided in the various systems of accounts prescribed by this Commission and now in effect, and so as to enable it to file, if required by the Commission, separate reports showing such information for each of said plants.

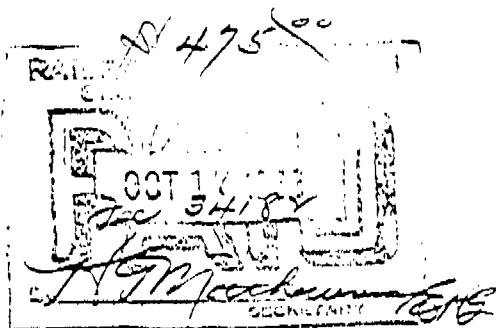
7. The authority herein granted is not to be construed as a finding by this Commission of the value of the properties of applicant.

8. The authority herein granted will become effective when Southern Oregon Gas Corporation has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is Four Hundred and Seventy-five (\$475.00) Dollars, and when it has filed with the Railroad Commission a stipulation duly authorized by its board of directors in which it agrees that in the event Niagara Share Corporation of Maryland

transfers all or any part of said preferred stocks, it will forthwith cause appropriate proceedings to be taken to amend its articles of incorporation so as to provide that the voting rights conferred upon the owners of said preferred stock may be exercised forthwith and immediately upon the happening of default in the payment of dividends on said preferred stocks and without the necessity of calling or holding any special meeting of the holders of shares of said preferred stocks and the favorable vote at such meeting of such holders to exercise such rights; and further, to amend its articles of incorporation so as to provide that if a default occurs in the payment of dividends on both or either class of said preferred stocks, after the same has been transferred, in any manner whatsoever in whole or in part by Niagara Share Corporation of Maryland, the owners of said preferred stocks shall have five votes for each share of preferred stock owned.

9. Southern Oregon Gas Corporation shall file with the Commission, within thirty(30) days after execution, two certified copies of its Mortgage of Chattels and Trust Indenture and of the Agreement of Merger as actually executed, and within thirty(30) days after issue, a report or reports, such as required by General Order No. 24-A, of the issue of the stock and bonds herein authorized.

DATED at San Francisco, California, this 17th day of October, 1938.



Rafcovate
Leon Whelan
Frank R. Newmyer
Ray & Riley
COMMISSIONERS