

ORIGINAL

Decision No. 36081

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of SAN JOAQUIN LIGHT AND POWER CORPORATION and PACIFIC GAS AND ELECTRIC COMPANY for an order authorizing Pacific Company to assume the debts, liabilities, and obligations of San Joaquin Corporation and authorizing San Joaquin Corporation to distribute and transfer to Pacific Company its plants, properties and other assets, all in conformity with the provisions of the agreement herein mentioned.

Application No. 22157
THIRD SUPPLEMENTAL

Wm. B. Bosley, A. L. Chickering, Robert H. Gerdes,
Thos. J. Straub and R. W. DuVal, for Applicants.

Dunne & Dunne by Arthur P. Dunne, for Ambrose
Gherini, Protestant.

Gregory, Hunt, Melvin and Faulkner, by Bradford M.
Melvin and Chas. J. Weisman, for Harry T. Nicolai,
Protestant.

BY THE COMMISSION:

FIRST SUPPLEMENTAL OPINION

By Decision No. 31354, dated October 13, 1938, as amended, the Commission authorized San Joaquin Light and Power Corporation, hereinafter sometimes referred to as San Joaquin, to distribute and transfer to Pacific Gas and Electric Company, hereinafter sometimes referred to as Pacific, its plants, properties and other assets in conformity with the provisions of

the agreement of August 11, 1938. A copy of the agreement is on file in this proceeding as Exhibit "D" attached to the original application. That agreement contains, among others, the following provisions:

"5. San Joaquin Corporation will purchase at their fair value and retire all shares of its common stock now held by its minority common-stockholders (i.e., common stockholders other than Pacific Company) or will cause the fair value of such minority common stockholders' proportional shares of its net distributable assets to be ascertained in accordance with the provisions of the General Corporation Law of the State of California, and will pay to the minority holders of its common stock the full amount of money to which they shall be entitled.

* * * * *

"10. San Joaquin Corporation will distribute to Pacific Company, as its sole remaining stockholder, after payment of all amounts payable to its minority preferred stockholders and minority common stockholders, all of its plants, properties and other assets the disposition of which is not hereinbefore provided for."

As of June 30, 1938, Pacific owned all but 702 shares of San Joaquin's outstanding 129,569 shares of common stock. In the Opinion in said Decision No. 31354, ⁽¹⁾ the Commission referring to the 702 shares of common stock, said:

"At the hearing had on September 20, Wm. B. Bosley, counsel for applicants stated that San Joaquin will by the processes of negotiation, if practicable, acquire the 702 shares of its common stock held by others than Pacific. If it cannot reach an agreement with the holders of the stock as to its fair value, he indicated that a proceeding would be instituted in conformity with the General Corporation Law of this State to determine the rights of all parties in interest. The matter of determining the value of the 702 shares of common stock of San Joaquin is not an issue in this proceeding."

⁽¹⁾ Vol. 41, Opinions and Orders of the Railroad Commission, page 609.

Under the terms of the agreement of August 11, 1938, Pacific assumed and agreed to pay all debts and liabilities of San Joaquin.

San Joaquin offered to acquire from the owners thereof said 702 shares at \$120 per share. Up to December 27, 1938, San Joaquin acquired 339 of said 702 shares of stock. The holders of the remaining 363 shares refused to accept the offer made by San Joaquin. On or about December 31, 1938, San Joaquin and Pacific executed documents purporting to distribute and transfer all of the properties of the former to the latter, except Federal Power Commission licenses which were later transferred, and \$250,000 of cash reserved for the purpose of paying a final cash dividend on San Joaquin's outstanding shares of common stock, pay the minority common stockholders the fair value of their proportional shares of its net distributable assets, and pay expenses of dissolution proceeding. Any balance remaining is to be used to pay, in part, San Joaquin's indebtedness to Pacific. Soon thereafter, a proceeding was instituted in the Superior Court of the State of California, in Fresno County, for the purpose of obtaining a determination of the rights of all classes of San Joaquin's shareholders in and to San Joaquin's assets and particularly the rights of San Joaquin's minority common stockholders. The Superior Court sustained demurrers filed by counsel for minority stockholders.

One ground for demurrer, sustained by the Court, was that the San Joaquin had violated the Commission's order of October 13, 1938. The seeming reason for this ruling was that

the Commission's order had permitted San Joaquin to make conveyance in accordance with its contract with Pacific dated August 11, 1938, this contract being construed by the Court to require that all outstanding shares of stock should first be purchased. An appeal was taken to the District Court of Appeal (52 A.C. (2d) 314), and although that Court reversed the judgment below with directions to overrule the demurrers, it did say, however, that "It would appear that the Order of the Commission has never been complied with, as the Pacific is not yet the sole remaining stockholder of San Joaquin."

It is because of the cloud thus cast upon the lawfulness of the conveyance made by San Joaquin to Pacific on December 31, 1938, that these two corporations now present this Third Supplemental Application asking the Commission to enter another order, (a) approving San Joaquin's assignment of its securities and current assets and its distribution and transfer of its plants, properties and other assets heretofore made by it to Pacific, and (b) authorizing San Joaquin to execute and deliver to Pacific a deed of conveyance by way of further assurance of all of the plants, properties and assets heretofore transferred and distributed to Pacific.

Applicants correctly point out that the Commission was fully advised at the hearing upon the original application of their possible inability to acquire all of the outstanding shares of San Joaquin's stock, and of the necessity to proceed by action brought in the courts in accordance with the provisions of the Civil Code respecting corporate dissolutions. They assert further

that when they agreed by their amended contract of December 27, 1938, to make an immediate transfer of assets before all stockholders' shares had been retired, they did so in the belief that such procedure was in compliance with the authorization theretofore given by the Commission.

Two of San Joaquin's common stockholders, owning together 250 shares, appeared in protest to the granting of the instant application, they contending that the Commission is without jurisdiction to approve of or consent to a transaction which has been determined by a judicial tribunal to have been an illegal act. We cannot agree with the views expressed by these protestants, and will, therefore, deny their motions to dismiss. No one will question the proposition that a utility may not dispose of its property or be relieved of its service obligation until the Commission first gives its assent. The Commission gave its assent to the transfer of the San Joaquin's properties because of the belief that the transaction clearly was in the public interest. Certainly it is not without jurisdiction now to reaffirm that finding, and to permit the execution of such further conveyance as may be necessary as to give assurance that applicants' transactions are in full compliance with the Commission's authorization. Such action will not in any way deprive the protesting stockholders of any substantive legal rights they might possess as parties in the pending court proceeding. It will have the effect only of placing them in a position where they may not continue to assert that the utilities have acted in violation of the Commission's order. Of course, any action taken by this Com-

mission is not to be construed as an attempt to circumscribe the Court in determining the rights and duties of a corporation upon dissolution.

Accordingly, the Commission believes that it should not hesitate to reaffirm its finding in Decision No. 31354 of October 13, 1938, that the transfer of San Joaquin's properties to Pacific would be in the public interest, and to declare its approval of the transfer thereafter made on December 31, 1938, as having been in accordance with the conditions intended to be imposed in that decision. The Order herein given will amend that of October 13, 1938, by stating that San Joaquin may convey its properties and assets to Pacific in conformity with the agreement between them dated August 11, 1938, as supplemented by their later agreement of December 27, 1938, and will authorize the execution of such further instrument or instruments as San Joaquin and Pacific deem necessary to confirm the conveyance of the properties of the former to the latter.

FOURTH SUPPLEMENTAL ORDER

A public hearing having been held on applicants' Third Supplemental Application by Examiner Fankhauser; the Commission having considered protestants' motion to dismiss said Third Supplemental Application and the evidence submitted by applicants and it being of the opinion that the motion to dismiss said Third Supplemental Application should be denied; that the transfer of San Joaquin's properties to Pacific is in the public interest, and that said Third Supplemental Application should be

granted as herein provided, therefore,

IT IS HEREBY ORDERED as follows:

1. Protestants' motion to dismiss said Third Supplemental Application is hereby denied.

2. Paragraph one of the Order in Decision No. 31354, dated October 13, 1938, is hereby amended to read:

San Joaquin Light and Power Corporation may distribute and transfer to Pacific Gas and Electric Company its plants, properties and other assets in conformity with the provisions of the agreement between said companies dated August 11, 1938, filed as Exhibit "D" in this proceeding, as supplemented by the agreement of December 27, 1938, also on file in this proceeding.

3. San Joaquin Light and Power Corporation and Pacific Gas and Electric Company may execute such further instrument or instruments as they deem necessary to confirm the conveyance made of the properties of San Joaquin Light and Power Corporation to Pacific Gas and Electric Company.

4. The authority herein granted will become effective ten (10) days after the date hereof.

5. Within thirty (30) days after the execution of the deed of confirmation and further assurance, Pacific Gas and Electric Company shall file with the Railroad Commission a certified copy of the same.

Dated at San Francisco, California, this th 29 day of

December, 1942

Justin J. Calver
Ray C. Cline
A. J. Baker
Francis J. Haberman
Richard L. Jackson
Commissioners