

Decision No. 34721

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
CALIFORNIA-PACIFIC UTILITIES COMPANY

for an order authorizing it: (a) to
assume \$1,800,000 principal amount
of bonds of Eastern Oregon Light and
Power Company; (b) to issue and sell
\$1,375,000 principal amount of appli-
cant's First Mortgage Bonds, Series
B, 3-1/8%, due 1971; (c) to issue and
sell not more than 11,400 shares of
its new 4-1/2% Preferred Stock; and
(d) to issue and sell not less than
23,592 shares of its Common Stock.

ORIGINAL

Application
No. 27206

ORRICK, DAHLQUIST, NEFF, BROWN AND HERRINGTON, by
T. W. DAHLQUIST, for applicant.

JOHN FRANCIS NEYLAN, GEORGE R. JOHNSON and
FRANKLIN M. BROWN, for Halsey, Stuart & Co., Inc.

O P I N I O N

In this application as amended, the Railroad Commission
is asked to enter an order authorizing:

1. California-Pacific Utilities Company to assume the pay-
ment of \$1,800,000 of Eastern Oregon Light and Power Company first
mortgage bonds, 3-1/2%, due 1970.

2. California-Pacific Utilities Company to issue:

(a) At not less than par and accrued interest,
\$1,375,000 of first mortgage, 3-1/8% bonds,
due 1971.

(b) \$32,800 par value (1,640 shares) of 4-1/2% cumu-
lative preferred stock, said stock to be issued
at par.

(c) \$599,720 par value (29,986 shares) of common
stock to be sold at not less than \$29 per share
net to the company.

3. California-Pacific Utilities to execute a supplemental
indenture defining the terms and conditions of the bond issue.

4. Granting California-Pacific Utilities an exemption from the competitive bidding rule promulgated by Decision No. 38164, dated January 15, 1946.

A hearing was held on this application by Examiner Fankhauser on February 14. Honorable George Flagg, Public Utilities Commissioner of Oregon, was present at such hearing and received evidence on the application which the company filed with him. It asks from him an order in form similar to that requested from the Railroad Commission, except it omits from the application filed with the Public Utilities Commissioner of Oregon the request covered by item 4.

California-Pacific Utilities Company, hereinafter referred to as applicant, proposes to acquire the properties of Eastern Oregon Light and Power Company, hereinafter referred to as Eastern Oregon. The basic consideration to be paid for the properties is the assumption by applicant of \$1,800,000 of 3-1/2% first mortgage bonds, due 1970, of Eastern Oregon, plus the delivery by applicant to Eastern Oregon of 1,640 shares (\$32,800 par value) of applicant's 4-1/2% cumulative preferred stock, plus a cash payment of \$44,595 by applicant to Eastern Oregon. A copy of the agreement of sale is filed in this application as Exhibit "B". It provides for certain additions to and deductions from the basic purchase price.

Eastern Oregon owns and operates a public utility electric system in the Counties of Grant, Baker and Union in the State of Oregon. It furnishes electric service to about 8,670 consumers. Its gross operating revenues amount to about \$700,000 a year. The original cost of its properties as of November 30,

1945, (adjusted fixed capital after acquisition adjustments and elimination of intangibles) less accrued depreciation is reported at \$2,081,646.83. The aggregate basic consideration mentioned above is \$2,277,395, which, in the opinion of applicant's president, is a reasonable amount to be paid for Eastern Oregon properties.

Applicant now owns and operates electric properties in Grant and Harney Counties, Oregon, and gas properties at LaGrand, Roseburg, Grant's Pass, Medford, Ashland and Klamath Falls, Oregon. Its existing operations and those of Eastern Oregon properties proposed to be acquired are said to readily lend themselves to a combined operation which would result in some savings.

For the purpose of redeeming the \$1,800,000 of 3-1/2% first mortgage bonds of Eastern Oregon, and raising the cash to be paid Eastern Oregon, applicant asks permission to issue \$1,375,000 of its series B, 3-1/8% bonds, due 1971, and 29,986 shares (\$599,970 par value) of common stock. Applicant on January 3, 1946, entered into an agreement with First California Company, Incorporated, hereinafter sometimes referred to as the underwriter, whereby, subject to the requisite approval of all public authorities having jurisdiction in the premises, applicant appoints said underwriter as its agent to sell said \$1,375,000 of bonds at private placement and agrees to pay it a finder's fee of \$6,875 in consideration of which said underwriter has guaranteed to effect the sale of said bonds at par plus accrued interest. Said underwriter further agrees to purchase at a price of \$29 per share, 29,986 shares of applicant's common stock, \$20 par value. In the event it sells the stock in excess of \$31.50 per share, it

must pay to applicant an additional amount equal to such excess. The stock can be sold only to bona fide residents of California. Under the agreement applicant is assured to receive \$1,375,000 for its bonds less a finder's fee of \$6,875, and a minimum of \$29 per share, \$599,720, for its common stock. The sale of the securities is, as said, subject to their issue being authorized by all public authorities having jurisdiction in the premises.

During the course of the hearing, Halsey, Stuart & Co., Inc., through its counsel, offered to buy applicant's 3-1/8% bonds at a guaranteed minimum price of 102.1875, which is on a 3% basis, and its common stock at not less than \$30 per share. This offer was made with the understanding that the securities be sold at competitive bidding and that Halsey, Stuart & Co., Inc., be given the opportunity to submit a bid for them.

Counsel for applicant at the beginning of the hearing filed a motion in which he asks the Commission to construe the order in Decision No. 38164, dated January 15, 1946, in Case No. 4761, requiring competitive bidding in the issuance and sale of securities by public utilities, as meaning that such order applies only to applications, with respect to the issuance of securities, filed after February 4, 1946, and that any application with respect to the issuance and sale of securities filed in good faith with the Commission prior to February 4, 1946, is outside the scope of the order. This application was filed on January 19, 1946. The order in Decision No. 38164, dated January 15, 1946, provides that it is effective twenty days after the date thereof. The purpose of postponing the effective date of the order was to give the parties interested an opportunity to file a petition for a rehearing or modification of the order. No such petition was

filed.

The evidence before us does not warrant the granting of this application. It is therefore not necessary to pass upon applicant's motion.

We believe that this application should be denied because we are not convinced that applicant, under existing conditions, is receiving the best price for its securities or that it has made an advantageous contract for the purchase of Eastern Oregon properties. Furthermore, we believe that applicant's bonds should not be sold by private placement or its common stock to bona fide residents of California only, as provided in the proposed underwriting agreement. Its securities should be sold by a general offering.

O R D E R

The Commission having considered the evidence submitted in this matter and it being of the opinion that the granting of this application, for the reasons set forth in the foregoing opinion, is not in the public interest and that this application should be denied, therefore,

IT IS HEREBY ORDERED that this application be, and it is hereby, denied.

Dated at San Francisco, California, this 26th day
of February, 1946.

David C. ...
Justice F. ...

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Commissioners