

ORIGINAL

Decision No. 39951

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
)
 SOUTHERN PACIFIC MILLING COMPANY,)
 a California corporation,)
) Application)
 for an order authorizing the issuance) No. 28137)
 of shares of preferred and common))
 stock pursuant to the merger of))
 applicant and Pacific Development))
 Corporation, a Delaware corporation.))
 -----)

McCutchen, Thomas, Matthew, Griffiths & Greene,
 by Robert M. Brown, for applicant.
M. A. Fitzgerald, for Ernest Vollmer, Agent for
 Planters Bank and Trust Company of Hopkinsville,
 Kentucky, trustee for owners of stock of South-
 ern Pacific Milling Company.
Raymond V. Erick, in propria persona.

O P I N I O N

This application involves the merger, pursuant to the terms of the merger agreement filed as Exhibit "C", of Pacific Development Corporation and Southern Pacific Milling Company, and the issue of notes and stock and the assumption of indebtedness by Southern Pacific Milling Company, the surviving corporation.

The Pacific Development Corporation is a corporation organized in 1946 under the laws of Delaware for the purpose of acquiring shares of common stock of Southern Pacific Milling Company. Pacific Development Corporation has acquired from various stockholders 27,790 shares of the outstanding stock of the Milling Company, at a cost of \$694,750 or at an average cost of \$25 per share. As of December 31, 1946, Pacific Development

Corporation reports assets and liabilities as follows:

Assets

Organization expense	\$ 760.34
27,790 shares common stock of Southern Pacific Milling Company at cost	694,750.00
Cash	<u>24,239.66</u>
Total assets	<u>\$719,750.00</u>

Liabilities

Common stock (50,000 shares of the par value of \$1 each)	\$ 50,000.00
Preferred stock (11,250 shares of the par value of \$20 each)	225,000.00
4% note due Bank of Manhattan Company of New York	444,750.00
Accrued interest on note	8,185.00
Deficit	<u>(8,185.00)</u>
Total liabilities	<u>\$719,750.00</u>

To obtain funds to pay for the 27,790 shares of stock of Southern Pacific Milling Company, Pacific Development Corporation received \$50,000 from the sale of 50,000 shares of its common stock, \$225,000 from the sale of the 11,250 shares of 5% cumulative preferred stock, and borrowed \$444,750 from the Bank of Manhattan Company. The loan is represented by a 4% note, due January 31, 1947. Its payment is secured by the deposit of the 27,790 shares of common stock of Southern Pacific Milling Company. Both the common and preferred shares of stock issued by the Pacific Development Corporation are owned by T. M. Evans, K. R. Simpson, Jr., and members of their families.

Southern Pacific Milling Company is a corporation organized under the laws of California. It is engaged in the business of operating public warehouses and the business of servicing and merchandising various products in the Counties of Santa Clara, Monterey, Ventura, Santa Barbara and San Luis Obispo,

California. For the fiscal year ending May 31, 1946, it had a gross income of \$5,706,273.94. Its gross income from warehouse business amounted to \$333,715.43, or about 5.84% of its total gross income. Its net income after taxes for the year amounted to \$153,639.82. For the six months ending November 30, 1946, the company reports a net income of \$81,764.82.

As of November 30, 1946, Southern Pacific Milling Company reports assets and liabilities as follows:

<u>Assets</u>		
Current assets		\$1,392,868.56
Cash	\$ 13,611.61	
Notes and accounts receivable	568,869.74	
Inventories	<u>810,387.21</u>	
Operative property		773,869.17
Land	99,899.27	
Buildings	792,584.89	
Machinery and equipment	<u>884,172.08</u>	
Sub-total	1,776,656.24	
Less accrued depreciation	<u>1,002,787.07</u>	
Net	773,869.17	
Nonoperative property		22,465.73
Land	14,077.69	
Buildings	<u>26,928.30</u>	
Sub-total	41,005.99	
Less accrued depreciation	<u>18,540.26</u>	
Net	22,465.73	
Investments		40.00
Deferred charges		<u>43,217.43</u>
Total assets		<u>\$2,232,460.89</u>
<u>Liabilities</u>		
Current liabilities		\$ 472,752.00
Notes payable	\$140,000.00	
Drafts payable	52,318.38	
Accounts payable	121,914.82	
Accrued taxes	155,598.14	
Other current liabilities	<u>2,920.66</u>	
Mortgage payable		75.00
Reserve for contingencies		52,900.00
Deferred credits		875.00
Preferred capital stock		163,480.00
Common stock		616,200.00
Surplus arising from appreciation		17,838.51
Surplus earned		<u>908,340.38</u>
Total liabilities		<u>\$2,232,460.89</u>

Southern Pacific Milling Company has engaged upon an active campaign to sell properties for which it has no further need. They consist of warehouses, the operation of which has been abandoned under Commission authorization, industrial sites, residential lots, land, cottages and dwellings used by employees. To December 31, 1946, the company realized from the sale of properties \$143,400, which properties were carried on its books at \$28,810. The proceeds from the sale of the properties, together with other funds on hand, were used to redeem the company's outstanding 7% cumulative preferred stock. K. R. Simpson, Jr., president of the Milling Company, testified that the company should realize at least an additional sum of \$155,000 from the sale of nonoperative properties. This money would be used to pay in part the bank loan, to which reference is made hereafter.

Southern Pacific Milling Company has now outstanding 30,810 shares of common stock of the par value of \$20 each. The aggregate par value is \$616,200. As said, the Pacific Development Corporation owns 27,790 of such shares, leaving 3,020 shares owned by others. However, T. M. Evans and K. R. Simpson, Jr., both of whom are stockholders of Pacific Development Corporation, own 1,025 shares of the 3,020, leaving 1,995 held by others. The testimony shows that Pacific Development Corporation has offered to acquire all outstanding common shares of the Southern Pacific Milling Company at \$25 per share.

It is proposed to merge Pacific Development Corporation into Southern Pacific Milling Company, pursuant to the provisions of the agreement of merger on file in this proceeding as Exhibit "C". The Southern Pacific Milling Company, under this agreement,

will be the surviving corporation and will assume the liabilities of Pacific Development Corporation, to wit, the \$444,750 note payable to the Bank of Manhattan Company. The Bank of Manhattan Company has agreed to extend to the Southern Pacific Milling Company a credit of \$500,000, \$444,750 of which would be used to refund the assumed indebtedness. The \$500,000 loan is payable in semi-annual instalments of \$50,000, and bears interest at the rate of 4% per annum. The Southern Pacific Milling Company would also issue \$225,000 par value of 4% noncumulative preferred stock in exchange for the \$225,000 of 5% cumulative preferred stock issued by Pacific Development Corporation, and 34,434 shares of common stock in exchange for the 30,810 shares of common stock now outstanding. Of the shares of common stock to be issued, 27,790 shares would be issued to Pacific Development Corporation in exchange for the shares of stock it now owns and 6,644 shares would be issued in exchange for 3,020 shares held by others.

The testimony shows that before the merger the 30,810 shares of common stock of Southern Pacific Milling Company have a book value of \$50.06 per share. After the merger, because of the assumption of the \$444,750 of indebtedness and issue of \$225,000 of preferred stock, the 34,434 shares of common stock which Southern Pacific Milling Company would issue would have a book value of \$25.69 per share. Stockholders other than Pacific Development Corporation now hold 3,020 shares, or 9.8%, of the total common stock. After the issue of 6,644 shares to them in exchange for the 3,020 shares they would hold 19.3% of the total common stock. Applicant is of the opinion that the increase in the equity ownership on the part of the minority stockholders

represents not less than a fair and adequate consideration for any detriment to holders of common shares of applicant resulting from the assumption of the indebtedness of Pacific Development Corporation.

Upon consummation of the merger agreement, Southern Pacific Milling Company will have received in cash from Pacific Development Corporation about \$12,000. According to the testimony it will receive no additional physical assets or business outlets.

Southern Pacific Milling Company would become liable for the payment of \$444,750 of indebtedness incurred by the Pacific Development Corporation and for the servicing of \$225,000 of 4% preferred stock which would be issued to refund the \$225,000 of 5% cumulative preferred stock issued by the Pacific Development Corporation. The dividend on the 4% preferred stock is noncumulative if not earned. The debt and preferred stock would have a prior claim upon the Southern Pacific Milling Company's assets and earnings. While the Pacific Development Corporation, which owns 27,790 shares of the outstanding 30,810 shares of Southern Pacific Milling Company stock is in favor of completing the merger agreement, some minority stockholders are opposed to such action. They feel that they should not be called upon to contribute to the payment of an indebtedness which was not incurred for their benefit. While the minority stockholders may have an adequate remedy at law to protect their rights, the Commission is called upon to authorize Southern Pacific Milling Company to assume an indebtedness and issue a note and stocks resulting in the refinancing of the company's properties. In our

opinion, no adequate showing has been made that warrants us to make a finding that the refinancing of the Southern Pacific Milling Company properties, as herein proposed, is necessary and in the public interest. It appears to us that the company is not receiving an adequate consideration for the assumption of the indebtedness and the issue of stocks.

ORDER

The Commission having considered the evidence submitted at the hearing had on this application before Examiner Fankhauser, and it being of the opinion that the application should be denied for the reasons stated in the foregoing opinion, therefore,

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

Dated at San Francisco, California, this 11th day of February, 1947.

Harold Kula
Justice F. Coarney
W. H. Powell
A. J. Anderson
Samuel Patten
Commissioners