

Decision No. 40719

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of )  
SOUTHERN PACIFIC MILLING COMPANY, )  
a California corporation, )  
and )  
CALIFORNIA PACIFIC DEVELOPMENT )  
CORPORATION, a California )  
corporation, )  
for an order authorizing the transfer )  
of properties and the issuance of )  
shares of preferred and common stock )  
pursuant to the merger of Southern )  
Pacific Milling Company into )  
California Pacific Development )  
Corporation. )  
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**ORIGINAL**

Application  
No. 28137  
(Petition for Rehearing  
on First Supplemental  
Application)

McCutchen, Thomas, Matthew, Griffiths & Greene,  
by Robert M. Brown and Harry W. Henry, for  
applicants.  
M. A. Fitzgerald, for protestants and petitioners,  
Paul and Anna Polizzotto.

SECOND SUPPLEMENTAL OPINION

The Commission by Decision No. 40508, dated July 8,  
1947, authorized Southern Pacific Milling Company to merge into  
California Pacific Development Corporation pursuant to the pro-  
visions of the Agreement of Merger on file as Exhibit "A"  
attached to the petition in the First Supplemental Application.  
By said decision, the Commission also authorized California  
Pacific Development Corporation to issue to the holders of out-  
standing common shares of Southern Pacific Milling Company, other  
than California Pacific Development Corporation, not exceeding

2,355 shares of common stock of said California Pacific Development Corporation, of the par value of \$1 per share. It further authorized California Pacific Development Corporation to issue 4% serial promissory notes in the aggregate sum of not exceeding \$500,000, to issue not exceeding 11,250 shares of 4% preferred stock of the par value of \$20 per share, and to issue 50,000 shares of common stock of the par value of \$1 per share in exchange for \$50,000 of common stock then outstanding, all as provided in the order in said Decision No. 40508.

On July 18 Paul Polizzotto and Anna Polizzotto, shareholders of Southern Pacific Milling Company, filed in this matter their petition for rehearing and asked that the Commission's Decision of July 3, 1947, be set aside and annulled. The Commission by its order of July 29, 1947, granted said hearing. The hearing on the petition was held on August 8, 1947.

Applicants' proposals are set forth in Decision No. 40508. They were not modified by the testimony submitted at the hearing had on August 8, 1947. The testimony shows that California Pacific Development Corporation owns 27,790 shares or 97.25% of the outstanding stock of Southern Pacific Milling Company. Petitioners own 450 shares and other stockholders, who were not represented at the hearing, 335 shares.

Under the merger agreement California Pacific Development Corporation, as stated in Decision No. 40508, would issue to the minority stockholders three shares of its common stock for each share of Southern Pacific Milling Company stock held by them or, in the alternative, pay them \$40 per share for such stock.

Further applicants have agreed, at the request of any minority shareholder of Southern Pacific Milling Company, to pay such shareholder in lieu of said \$40 per share, such price per share as shall be fixed by an impartial qualified appraiser to be designated by agreement between the company and the shareholder, the award of such appraiser to be binding upon both parties.

A pro forma balance sheet giving effect to the proposed merger as of April 30, 1947, shows assets and liabilities as follows:

<u>Assets</u>	
<u>Current Assets:</u>	
Cash on hand in transit	\$ 95,849.17
Notes and accounts receivables-less reserves	508,280.82
Inventories	886,232.34
Total current assets	<u>1,490,362.33</u>
<u>Fixed Assets:</u>	
Investments	40.00
Non-operative property-less reserves	8,657.65
Operative property-less reserves	730,464.55
Total fixed assets	<u>739,162.20</u>
<u>Deferred Charges</u>	<u>53,192.41</u>
Total	<u>\$2,282,716.94</u>
<u>Liabilities and Capital</u>	
<u>Current Liabilities:</u>	
Notes payable	\$ 150,000.00
Drafts payable	43,425.78
Vouchers payable	108,553.84
Taxes payable	159,615.68
Current liabilities, other	30,530.03
Total current liabilities	<u>492,125.33</u>
<u>Long-Term Liabilities:</u>	
Serial notes due Bank of the Manhattan Company	500,000.00
<u>Deferred Credits</u>	<u>875.00</u>
Total liabilities	<u>993,000.33</u>
<u>Capital Stock and Surplus:</u>	
Preferred stock-California Pacific Dev. Co.	225,000.00
Common stock-California Pacific Dev. Co.	52,355.00
Paid in surplus-California Pacific Dev. Co.	50,000.00
Appreciation surplus-Southern Pacific Milling Co.	17,838.51
Earned surplus-Southern Pacific Milling Co.	944,523.10
Total capital stock and surplus	<u>1,289,716.61</u>
Total	<u>\$2,282,716.94</u>

Petitioners have not accepted any one of applicants' proposals. They allege that the merger plan is unfair to minority stockholders and leaves them in a disadvantageous position.

This Commission will not undertake to determine the value of the outstanding stock of Southern Pacific Milling Company. The Civil Code sets forth the conditions under which corporations may merge their business and properties and it defines the rights and remedies of shareholders. Section 369 of, said code is designed to protect the interests of dissenting shareholders in a merger proceeding. It provides complete statutory procedure for the purpose of fixing the compensation to be paid such shareholders. Accordingly we believe it is for the courts, rather than this Commission, to determine if there has been any infringement on the rights of the minority shareholders.

In a proceeding such as this one the Commission is interested in the effect on the public utility functions and on the financial structure of the surviving corporation. So far as the business<sup>(1)</sup> of Southern Pacific Milling Company is concerned the record herein shows that the merger of Southern Pacific Milling Company into California Pacific Development Corporation will not result in any curtailment in the services and facilities now available to the public, and that no change in rates is now contemplated. The financial statements on file in the proceeding clearly indicate that the surviving corporation will be in a

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(1) The public utility operations comprise about four percent of the total operations.

favorable cash position and that it should be able to continue its operations without prejudice to the public interest.

The order in Decision No. 40508 will be reaffirmed.

SECOND SUPPLEMENTAL ORDER

A public hearing having been held on the petition for rehearing filed by Paul and Anna Polizzotto, and the Commission having considered all the evidence in this proceeding including the evidence submitted at such hearing, and it being of the opinion that the evidence does not warrant any modification of Decision No. 40508, dated July 8, 1947, therefore,

IT IS HEREBY ORDERED that the Commission hereby reaffirms Decision No. 40508, dated July 8, 1947.

Dated at San Francisco, California, this 16<sup>th</sup> day of September, 1947.

Harold H. Kula  
Justus F. Craven  
W. A. Powell  
R. T. Johnson

Commissioners