

ORIGINAL

Decision No. 41054

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 PACIFIC GAS AND ELECTRIC COMPANY and)
 WESTERN CANAL COMPANY for an order)
 authorizing the said Canal Company to)
 grant and convey to said Pacific)
 Company all right and title to its)
 properties; authorizing applicants to)
 execute a mutual release of purported)
 obligations; authorizing said Pacific)
 Company to assume and discharge all)
 liabilities and obligations of said)
 Canal Company, to record said grant)
 and conveyance on its books as)
 herein requested, and to make the)
 tariff schedules filing herein)
 mentioned.)
 -----)

Application
No. 28922

Robert E. Gerdes, R. W. DuVal and Frederick T. Searls,
for applicants.

O P I N I O N

Pacific Gas and Electric Company, hereinafter sometimes referred to as Pacific Company, and Western Canal Company, hereinafter sometimes referred to as Canal Company, ask the Commission to make its decision:

1. Granting and conferring upon the Canal Company all necessary permission and authority to transfer to the Pacific Company all of its right and title to its properties and assets of every kind;

2. Granting and conferring upon the Canal Company and the Pacific Company all necessary permission and authority to enter into an agreement releasing each other from any purported

obligation under the agreements referred to in paragraph X of the application;

3. Granting and conferring upon the Pacific Company all necessary permission and authority to acknowledge as its own and expressly assume all obligations and liabilities of the Canal Company, and to record said transfer of title from the Canal Company upon the books of the Pacific Company as requested in paragraph XIV of the application;

4. Declaring that the Canal Company concurrently with the transfer of all right and title to its properties to the Pacific Company, is relieved of the duties and functions of a public utility water corporation, and

5. Authorizing the Pacific Company, upon completion of the aforementioned transfer of title, to withdraw and cancel all filed and effective water tariff schedules of the Canal Company, and to refile the same in the name of the Pacific Company.

Western Canal Company was incorporated under the laws of California on January 30, 1915, with an authorized stock issue of \$200,000, divided into 200,000 shares of the par value of \$1 each. At the time of its organization, the management of the Canal Company proceeded on the theory that it was a mutual water company. Subscriptions for ten shares of its capital stock were made by each of its five incorporators and first members of its Board of Directors, and were paid for in full. These 50 shares of stock are now held in the name of the present directors of the Canal Company for the sole benefit of the Pacific Company. Subsequent to the issue of the 50 shares of stock, the Canal Company purported to issue stock as follows:

1. To persons claiming rights or interests in partially constructed canal conveyed to the Canal Company	4,175 shares
2. To the Bankers Trust Company as trustee of Great Western Power Company	<u>194,950</u> shares
Total	<u>199,125</u> shares

Pursuant to the authority contained in Decision No. 6294, dated April 26, 1919, (16 CRC 712) Great Western Power Company transferred all of its assets including its interest in the 194,950 shares of Canal Company stock, to Great Western Power Company of California. The latter assumed all of the obligations of the former. Prior to 1931 Great Western Power Company of California transferred 20,888 shares of stock of the Canal Company to land-owning water users who entered into water service contracts with the Canal Company.

In Decision No. 24321, dated December 21, 1931, in Cases No. 2847 and No. 2858 (36 CRC 899) the Commission found:

"From the entire evidence presented concerning the water operations of these defendants, it must be found that the Great Western Power Company of California holds its property and water rights subject to the public use for irrigation and domestic purposes, and that this defendant is primarily responsible for the continuance of that public service. The Western Canal Company is not a mutual water company as defined in the Act for Regulation of Water Companies, and, doubtless, were it standing alone, would not be exempted from the Commission's regulation. It is vested with the legal title to a canal system, a part of which was from the beginning impressed with the public use. But the fact cannot be overlooked that it is wholly a creation of the Power Company, and a device by which the latter has sought to escape its public obligation. The Canal Company owns no water rights, and without these its public utility function must be limited to a mere water transporting agency. But even in this respect, it is only a corporate fiction. Its title to the canal system is only a nominal title. The original purchase price, as seen above, was paid by the Power Company, and all additions thereto have been

made by the latter. The Power Company holds all water rights, not only those purchased from the old Feather River Company, but others acquired in part by the exercise of the right of eminent domain, and necessarily, therefore, devoted to the public use. Moreover, the water service actually rendered during the past fifteen years must be deemed to have been rendered by the Power Company alone, by reason of its complete domination and control over the property and affairs of its subsidiary corporation."

Subsequent to this decision, persons who held or who had contracts to purchase stock of the Canal Company filed actions in the Superior Court against Great Western Power Company of California and the Canal Company for recovery of the amounts paid by them for such stock on the ground, among others, that the stock was invalidly issued. The court rendered a judgement in favor of the plaintiffs. This judgement was affirmed by the District Court of Appeals.

Pursuant to the authority granted by Decision No. 28517, dated January 20, 1936, (39 CRC 522) Great Western Power Company of California transferred all of its properties and assets to the Pacific Company, including its interest in 174,062 shares of Canal Company stock which it then held. The Pacific Company assumed all obligations of Great Western Power Company of California, including among such obligations those arising from or through its relation to the Canal Company. Subsequently Pacific Company settled and paid all claims arising out of the issue of the Canal Company stock, with the exception of 88 shares outstanding in the name of the First National Bank of Chico. This bank became insolvent and has been liquidated. To date the Pacific Company has not been able to find the owners or holders of said 88 shares of stock. The Pacific Company has assumed any obligation arising out of the 88 shares. Except for the 88

shares, the Pacific Company is the owner of all the outstanding shares of stock of the Canal Company.

The agreements referred to in paragraph X of applicants' petition had as their objective the setting up of the Canal Company. Copies of such agreements have been filed as Exhibits "6", "7", "8" and "9". Counsel for applicants, after reviewing the provisions of the agreements and calling attention to the effect of this Commission's Decision No. 24321 and the decision of the District Court of Appeals, said:

"The situation in which we find ourselves can simply be summed up by saying that the original plan for setting up the Western Canal Company completely miscarried, the transaction did not have the intended legal effect, and in our opinion the four contracts which were the basis of the setting up of the Canal Company must be regarded as invalid and ineffective and create no obligations or liabilities on the part of the parties. It is our opinion that the Pacific Gas and Electric Company is entitled to recover title to the properties for which it paid; that the canal system was extended and enlarged apparently under that contract, but in view of the failure of that contract, the Pacific Gas and Electric Company is entitled to recover what it and its predecessors had paid for it, and also to an accounting for the earnings and proceeds from the properties for which it had paid, and correspondingly, obligations which were undertaken or incurred in the name of Western Canal Company should be actually performed by the Pacific Gas and Electric Company, either on its own behalf or as the successor of the two Great Western companies.

"The present proceeding is really one to secure authorization for the necessary formalities to clear up the ambiguous situation which has resulted from the failure of these transactions to have the intended legal effect as far as the Western Canal Company is concerned."

It is of record that a small portion of the canal properties was partially constructed by predecessors of the Canal Company and conveyed to the Canal Company in return for the payment by Great Western Power Company of \$30,923.14 and the issue

of 4,175 shares of stock of the Canal Company. The remainder of the Canal Company properties and equipment was acquired and constructed by Great Western Power Company, Great Western Power Company of California and the Pacific Company at a reported net cost of \$944,291.73. The sum of the two amounts aggregates \$975,214.87, which the Canal Company reports as the cost of its plant, properties and equipment as of December 31, 1946. This sum is exclusive of \$50 charged to organization expense for the services of the five original directors of the Canal Company and for which the original 50 shares of stock were issued to said Canal Company.

In Exhibit "14", applicants report the Canal Company's 1946 operating revenues at \$161,091.88 and expenses of maintenance and operation at \$87,475.16, leaving net revenue of \$73,616.72. Applicants' petition shows that all operating and maintenance expenses of and taxes on the Canal Company and its properties from the time of its inception have been borne by Great Western Power Company, Great Western Power Company of California or the Pacific Company, and that said companies have received all revenues from the sale of water from the Canal Company's system. It further shows that the Canal Company has never had any employees or payroll, and that all of the water business has been conducted by Great Western Power Company, Great Western Power Company of California or the Pacific Company.

The investment of the Pacific Company in the Canal Company is, as of May 31, 1947, reported at \$902,969.21. The derivation of this amount is shown in Exhibit "13", and generally speaking, it consists of the amount at which the Canal Company

stock owned by Great Western Power Company of California at the time that company's properties were transferred to the Pacific Company, was carried on the books of Great Western, plus the net cost of additions and betterments to the canal system made by the Pacific Company from 1936 to 1946, inclusive, plus the cost of settling litigation and claims arising out of the issue of the Canal Company stock. The Pacific Company proposes to record the Canal Company properties on its books as follows:

To tangible plant and fixed capital accounts	\$935,747.95
To intangible plant and fixed capital: Organization	<u>39,466.92</u>
Sub-total	975,214.87
To depreciation reserve account	<u>72,245.66</u>
Net cost of properties	<u>\$902,969.21</u>

The amount which the Pacific Company proposes to credit to the depreciation reserve is the difference between the reported investment in the Canal Company properties by the Pacific Company and the amount at which the Canal Company properties were carried on that company's books on December 31, 1946. Through the years the Canal Company accrued no depreciation on its properties. Pacific Company should prepare and file with the Commission a statement showing the estimated accrued depreciation in the Canal Company properties, calculated on a 5% sinking fund basis. The distribution of the purchase price to primary fixed capital and other accounts will be the subject matter of a supplemental order.

The transfer of the Canal Company properties to the Pacific Company we find is in the public interest. Henceforth

the Pacific Company will render public utility water service therefrom in its own name. The transfer will make possible the unification and simplification of accounting and the preparation and filing of reports.

O R D E R

The Commission has considered the evidence submitted at the hearing had on the above entitled application and is of the opinion that the transfer of the Western Canal Company properties to Pacific Gas and Electric Company is in the public interest and that such transfer should be authorized, therefore,

IT IS HEREBY ORDERED as follows:

1. Western Canal Company may, on or before March 31, 1948, transfer to Pacific Gas and Electric Company all of its right and title to its properties and assets of every kind, such transfer to be evidenced by a deed in, or substantially in, the same form as the deed on file in this application as Exhibit "3".
2. Western Canal Company and Pacific Gas and Electric Company may, on or before March 31, 1948, enter into an agreement releasing each other from any purported obligation under the agreements filed in this application as Exhibits "6", "7", "8" and "9".
3. Pacific Gas and Electric Company shall, prior to or concurrently with the transfer to it of the Western Canal Company properties, acknowledge as its own and expressly assume all obligations and liabilities of Western Canal Company, as

provided in Exhibit "4" on file in this application.

4. Western Canal Company, concurrently with the transfer of all right and title to its properties to Pacific Gas and Electric Company, is relieved of the duties and functions of a public utility water corporation.

5. Upon completion of the transfer of the title to Western Canal Company properties to Pacific Gas and Electric Company, Pacific Gas and Electric Company may withdraw and cancel all filed and effective tariff schedules of Western Canal Company and refile the same in the name of the Pacific Gas and Electric Company.

6. The action taken herein shall not be construed to be a finding of the value of the properties herein authorized to be transferred.

7. The authority herein granted is effective upon the date hereof.

Dated at San Francisco, California, this 22nd day of December, 1947.

Harold P. Kule
Justice J. Coleman
Frank A. Powell
R. J. Dwyer

Commissioners