

ORIGINAL

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

Decision No. 1424

In the Matter of the Application of
NORTHERN ELECTRIC RAILWAY COMPANY,
VALLEJO AND NORTHERN RAILROAD COMPANY
and WEST SIDE RAILROAD for an Order
authorizing the sale and transfer to
West Side Railroad of the right and
interest in the M Street highway and
railroad bridge across the Sacramento
River between the counties of Sacra-
mento and Yolo, heretofore owned by
Vallejo and Northern Railroad Company.

Application No. 878

Charles W. Slack and Arthur M. Seymour
for Northern Electric Railway Company.
T.T.C. Gregory and C.J. Goodell for
Vallejo and Northern Railroad Company.
John S. Partridge for West Side Railroad.
Lester J. Hinsdale for Oakland, Antioch
and Eastern Railway, protestant.
Eugene S. Wachhorst, District Attorney,
and Frank E. Atkinson, Deputy District
Attorney, for county of Sacramento,
protestant.
A. G. Bailey, District Attorney, for county
of Yolo, protestant.

THELEN, Commissioner.

OPINION

This is a joint application on behalf of the Northern Electric Railway Company, hereinafter called the Northern Electric, Vallejo and Northern Railroad Company, hereinafter called the Vallejo and Northern, and West Side Railroad, hereinafter called the West Side, for an order authorizing the transfer by the Northern Electric and the Vallejo and Northern to the West Side of the right and interest heretofore owned by Vallejo and Northern in the M Street railroad and highway bridge across the Sacramento River in Sacramento county and the town of Broderick, in Yolo county.

The hearing on this application was held in the city of Sacramento on January 26, 1914. At the hearing the county of Sacramento, the county of Yolo, and the Oakland, Antioch and Eastern Railway, hereinafter referred to as the Oakland and Antioch,

appeared and protested against the granting of the application. In accordance with the request of the parties, permission was given to file briefs. The last brief was filed on April 4, 1914, and the application is now ready for decision.

The petition in this case, after containing the usual averments, with reference to the incorporation of the three corporations which appear as joint applicants, refers to Ordinance No. 113 of the county of Sacramento, adopted on March 22, 1910, granting to Northern Electric Railway Company certain rights in the M Street bridge; also to Ordinance No. 119 of the board of supervisors of Sacramento county, adopted on December 30, 1910, granting certain rights in the M Street bridge to the Vallejo and Northern; and also to the proceedings taken before this Commission on Application No. 382 and to this Commission's decision No. 464, rendered on February 18, 1913, authorizing the Vallejo and Northern to sell and transfer all its property and franchises to the Northern Electric. The petition then recites that the West Side desires to purchase from the Northern Electric and the Vallejo and Northern and that the latter companies desire to sell to the West Side that certain right and franchise which was granted to the Vallejo and Northern by said ordinance No. 119 of the board of supervisors of Sacramento county; that neither the Northern Electric nor the Vallejo and Northern require the right granted by said ordinance to the Vallejo and Northern; that the West Side does require said right in order to serve the public between the town of Broderick and southerly thereof and the city of Sacramento; that the consideration for the transfer agreed upon between the parties is the sum of \$140,593.69; and that attached to the petition is a copy of the form of the proposed conveyance. The petitioners ask this Commission to make its order authorizing the transfer and assignment of the right and franchise granted to the Vallejo and Northern by said Ordinance No. 119. At the hearing the petitioners asked authority to amend their petition so as to ask for authority to

transfer all the rights which the Vallejo and Northern formerly had in the M Street bridge, including in addition to the rights granted by the county of Sacramento by Ordinance No. 119, also the rights which the Vallejo and Northern had as part owner of the M Street bridge under a contract with the Northern Electric. The application to so amend the petition was granted.

At the hearing protests were filed by the county of Sacramento, the county of Yolo and the Oakland and Antioch. The protests of the county of Sacramento and the county of Yolo refer to the fact that the route of the Vallejo and Northern was to be between Sacramento and Vallejo, while the route of the West Side is to be between Sacramento and Rio Vista, over an entirely different course. The counties take the position that a franchise to run from Sacramento to Vallejo can not be assigned to a railroad which is ^{to} run from Sacramento to Rio Vista over an entirely different route. They also claim that by reason of certain payments which they have obligated themselves to make in connection with the M Street bridge, they have a pecuniary interest therein and that the arrangement which the petitioners ask this Commission to sanction is such that these two counties are to be deprived of compensation for an additional use of the bridge, to which compensation they believe themselves entitled. The Oakland and Antioch likewise takes the position that the use of the M Street bridge by the West Side is an additional use to which it is entitled through its pro rata payment and protests against any transfer of the right formerly held by the Vallejo and Northern in such a way as to deprive the Oakland and Antioch of any compensation.

In order to secure a clear understanding of the situation, it will be necessary to examine the facts somewhat in detail.

The Northern Electric Railway Company was incorporated on September 19, 1907, for the purpose of constructing railroads to be operated by steam, electricity or other motive power throughout portions of northern California as far south as the city of

Sacramento, a total distance of 230 miles. These articles were amended on or about February 5, 1913, so as to give to the Northern Electric the right to construct additional lines of railway, so that the total authorized mileage is now 339 miles. In the amended articles, the Northern Electric was specifically granted the right to buy all the franchises and property of the Vallejo and Northern Railroad Company and to construct a line of railroad over the contemplated route of the Vallejo and Northern. In order to enable the Northern Electric to build its additional lines of railway west and south of the city of Sacramento, it became necessary to construct a bridge along an extension of M Street westerly across the Sacramento River to a point in Yolo county. Under the act of March 14, 1881, (Statutes 1881, p. 76) the power to erect bridges on public highways across navigable streams in this state or to grant franchises to individuals or corporations for the same is granted to the boards of supervisors of the several counties of this state. Section 2 of the act provides as follows:

"The power to grant franchises to individuals or corporations to construct bridges, and the regulation of tolls thereon, shall be exercised by the county on the left bank of all streams."

Section 3 provides as follows:

"Where a navigable stream is a boundary line between the counties, the boards of supervisors of such counties may join in the construction of the bridge, upon such terms as may be agreed upon; provided, however, that in case of a failure to agree, either county may build the bridge and maintain control thereof."

In 1907 another statute referring to the construction of bridges over navigable streams between adjoining counties was passed. This statute was approved on March 23, 1907, and is found on page 982 of the statutes of 1907. Section 1 thereof provides in part as follows:

"In case it shall appear to the boards of supervisors of two adjoining counties that any bridge shall be necessary for highway purposes, over any navigable river, stream or inlet of the sea, between said counties..
..... the boards of supervisors of such counties may, in their discretion, enter into an arrangement with any person or corporation for the building of a joint bridge..
..... and to provide for the construction and use thereof in such manner and upon such terms and conditions

as may be agreed upon between such counties and such person or corporation."

The section then contains a proviso to the effect that in no event shall either county agree to contribute more than one-third of the cost of construction of any such joint bridge.

Acting apparently under the provisions of these statutes, the Northern Electric applied to the county of Sacramento for authority to construct a railroad and highway bridge on an extension of M Street across the Sacramento River from Sacramento county to Yolo county. On March 22, 1910, the board of supervisors of Sacramento county adopted Ordinance No. 113, granting to the Northern Electric Railway Company, its successors and assigns, "the right, privilege, permission and franchise to construct, maintain and operate a combination railroad, wagon-way and foot-passenger bridge over and across the Sacramento River between the county of Sacramento, State of California, and the county of Yolo, State of California." The ordinance provided that the term of the franchise was to be fifty years, that the work of construction should be commenced within two years after the approval by the War Department of the United States of the location and plans for the bridge and should be prosecuted with reasonable diligence until completion, and that the Northern Electric, its successors and assigns, "shall maintain and keep in repair and shall operate and police said bridge at its own cost, unless hereinafter otherwise specifically agreed by and between said ~~xxx~~ grantee, its successors and assigns, and said county of Sacramento."

Section 9 specifically grants to the Northern Electric, its successors and assigns, "the right to use said bridge for railroad and highway purposes" but the section also provided that the Northern Electric should have no right to collect tolls from any person for the use of the bridge, but that nothing contained in the ordinance should be construed as giving the general public the right to use the bridge unless by special agreement

between the county of Sacramento and the Northern Electric. The section also provides that the county of Sacramento "shall have the right and option to acquire the use of said bridge for public highway purposes, upon the payment to said grantee herein, its successors or assigns, of such an amount as may hereafter be mutually agreed upon." This section concludes with the provision that if the county of Sacramento should acquire the right of using the bridge for public highway purposes, the Northern Electric and all other electric railroads using the bridge should pay the cost of operation and maintenance but that the county of Sacramento should pay to such railroad companies, on account of such ^{cost of} operation and maintenance, the sum of \$2,000 per annum.

Section 10 reserves to the county of Sacramento the right "to grant to three other electric railroad companies the right to use said bridge on such terms as may be just." The section also provides that if the Vallejo and Northern Railroad Company secures a franchise from the board of supervisors, this company shall share equally with the Northern Electric in the cost of construction, maintenance, operation and use of the bridge. The section continues as follows:

"If any other electric railroad company, other than said Northern Electric Railway Company and said Vallejo and Northern Railroad Company, shall hereafter be granted the right, privilege and franchise, by the board of supervisors of said county of Sacramento, to use said bridge, each of such electric railroad companies shall pay to the grantee hereof and to said Vallejo and Northern Railroad Company and also to such other persons and counties who may have joined in the construction of said bridge, its proportion of the original cost of the construction of said bridge and of all subsequent outlays thereupon, and should said county of Sacramento elect to exercise the option hereinbefore reserved of joining in the use of said bridge and of paying its proportion of the cost of the construction thereof, as herein provided, it is understood that said county of Sacramento shall be said its equal proportion of whatever amount may be so paid by any such other electric railroad company using said bridge as herein provided."

Section 11 of the ordinance declares that the franchise

is granted for the purpose of enabling the Northern Electric "to connect its railroad already constructed and in operation from the city of Chico, county of Butte, State of California, to and in the city of Sacramento, county of Sacramento, State of California, with its railroad to be constructed from and in said city of Sacramento, county of Sacramento, State of California, to the city of Woodland, county of Yolo, State of California."

The Vallejo and Northern Railroad Company was incorporated on or about October 20, 1909, for the purpose of constructing and operating a line of railroad from the city of Vallejo in a general northerly and northeasterly direction through Napa Junction, Jamison Canon, the town of Cordelia, the town of Fairfield, the town of Cement and the town of Broderick into the city of Sacramento, a total length of 62 miles, with certain branches. The testimony on this application shows that this railroad, as well as the Sacramento and Woodland Railroad Company, which was incorporated to construct a line of railroad from Sacramento westerly to the town of Woodland, were both controlled from the outset by the financiers in control of the Northern Electric Railway Company.

On August 2, 1910, a contract was entered into between the Northern Electric, the Vallejo and Northern, the county of Sacramento and the county of Yolo, providing for the construction, maintenance, use and operation of a joint railroad, public highway and foot-passenger bridge over the Sacramento River on an extension of M Street, this being the same bridge mentioned in Ordinance No. 113 hereinbefore referred to. The agreement provides in part that the two electric companies will construct the M Street bridge according to designated plans and specifications; that the electric companies lease to the counties of Sacramento and Yolo the right to use the highway portions of the bridge for public highway purposes until December 15, 1917, on the payment by the county of

Sacramento of the sum of \$118, 668.27, to be paid in designated installments, and on the payment by the county of Yolo of the sum of \$53,333.33, also in installments; that when these payments have been made, the electric companies will grant to the counties the easement and privilege of using the highway portion of the bridge, during the life of the proposed railroad bridge for railroad purposes; that until December 15, 1911, the electric companies will repair and operate and police the bridge at their own expense but that after December 15, 1911, the sum of \$2,000 per annum shall be paid to them on account of this work, as provided in Ordinance No. 113; that ^{of} this sum of \$2,000 the county of Sacramento shall pay the sum of \$1333.33 and the county of Yolo the sum ^{of} \$666.66; that the bridge shall cost approximately the sum of \$380,000; and that the agreement is made in pursuance of the statute of March 23, 1907, hereinbefore referred to, and of the other statutes of this state applicable thereto. This contract does not seem to contain any provision with reference to the possibility of additional franchises or of the payment to the counties of Sacramento and Yolo of compensation by additional electric railroad companies which might thereafter use the bridge. The provisions bearing on these subjects are apparently to be found solely in the ordinances of the county of Sacramento granting franchise rights.

On December 30, 1910, the board of supervisors of Sacramento county adopted Ordinance No. 119, granting to the Vallejo and Northern Railroad Company "the right, privilege, permission and franchise to join in the construction, maintenance, use and operation" of the M Street bridge. The franchise is made co-terminus with that of the Northern Electric and it is provided that the Vallejo and Northern shall share equally with the Northern Electric in the cost of construction, maintenance, operation and use of the bridge. Section 4 of the ordinance specifies that the franchise thereby granted shall be construed "to be one of the three rights to use said bridge, the right to grant which to two other

electric railroad companies was reserved in said ordinance granting the franchise to construct said bridge to said Northern Electric Railway Company, a corporation." Section 5 specifies that the franchise granted to the Vallejo and Northern is subject to all the conditions, limitations and reservations set forth in Ordinance No. 113, granting a similar franchise to the Northern Electric. Section 6 specifies that the franchise is granted "for the purpose of enabling the Vallejo and Northern to connect the route of its railroad in the city of Sacramento, county of Sacramento, State of California, to and with its route in the county of Yolo, State of California." It thus appears that the contract for the construction of the M Street bridge was entered into by the Vallejo and Northern before it secured its franchise from the county of Sacramento.

On June 29, 1912, the board of supervisors of Sacramento county adopted Ordinance No. 130, granting to the Oakland, Antioch and Eastern Railway, its successors and assigns, "the right, privilege, permission and franchise to join in the construction, maintenance, use and operation" of the M Street bridge. This franchise was made co-terminus with that of the Northern Electric. The ordinance provided, in section 3, that the Oakland and Antioch "shall pay its proportion of the original cost of the bridge and of subsequent outlays thereupon to the counties of Sacramento and Yolo and to said Northern Electric Railway Company and the Vallejo and Northern Railroad Company." Section 5 provides that the franchise granted shall be construed to be one of the three franchises to use the M Street bridge, the right to grant which was expressly reserved in Ordinance No. 113 to the county of Sacramento. The franchise was declared, by section 6, to be subject to all the conditions, limitations and reservations specified in Ordinance No. 113. On the same day on which this ordinance was passed, a contract was entered into between the Northern Electric, the Vallejo and North-

ern and the Oakland and Antioch, on the one hand, and the county of Yolo and the county of Sacramento, on the other, providing for the construction and subsequent use of the M Street bridge. Under this contract the Oakland and Antioch obligated itself to pay \$43,424.11 to the Northern Electric, \$43,424.11 to the Vallejo and Northern, \$24,290.42 to the county of Sacramento and \$12,145.21 to the county of Yolo. The Northern Electric agreed to continue the construction of the bridge to completion and the parties agreed that the contract of August 2, 1910, between the two counties, the Northern Electric and the Vallejo and Northern should continue in force and that they should apply, in so far as applicable, to the Oakland and Antioch. The Oakland and Antioch agrees to pay to the county of Sacramento yearly the sum of \$500 and to the county of Yolo yearly the sum of \$250 "as a partial reimbursement to said counties of the sums agreed by them to be paid annually toward the cost and expense of the maintenance and operation" of the M Street bridge. The contract further provides that upon the payment of the sums to be paid to the Northern Electric and the Vallejo and Northern, the Oakland and Antioch "shall be and it is hereby granted an interest and ownership in said bridge equal in extent to the interest and ownership" of the Northern Electric and the Vallejo and Northern. Thereafter, on July 8, 1912, the Northern Electric granted, bargained and sold to the Oakland and Antioch a one-sixth interest in the bridge and on the same day the Vallejo and Northern executed a similar deed also conveying a one-sixth interest in the bridge.

The M Street bridge was thereafter completed and placed in operation. As far as the present analysis has proceeded, the bridge was owned by the Northern Electric, the Vallejo and Northern and the Oakland and Antioch, each owning a one-third interest therein, and the counties of Yolo and Sacramento have been given a right to the use of the public highway portion thereof for highway purposes upon the payment of the sums of money hereinbefore specified and the county of Sacramento having elected to exercise

the option of joining in the use of the bridge, and of paying its proportion of the cost of construction thereof, as provided in section 10 of Ordinance No. 113, had acquired the right to be paid its equal proportion of such amount as might thereafter be paid by any other electric railroad company using the bridge, and had secured payment under this right from the Oakland and Antioch. Two franchises for the use of the bridge in addition to the one originally granted to the Northern Electric had been granted by the county of Sacramento and the right to grant an additional franchise to some other electric railroad still subsisted in the county of Sacramento.

On January 27, 1913, the Vallejo and Northern filed with the Railroad Commission its application for an order authorizing it to sell to the Northern Electric its entire railroad system and properties. These properties consisted of scattered parcels of real estate, of certain franchises, together with two disconnected pieces of track, the one in the city of Sacramento and the other running a few miles northerly from the city of Suisun, together with other rights to which it is not necessary here to refer. The rights to be conveyed included the rights of the Vallejo and Northern under Ordinance No. 119 of the county of Sacramento.

On February 18, 1913, this Commission, in its decision No. 464, authorized the transfer to the Northern Electric Company of all the property of the Vallejo and Northern as prayed for in the petition.

The testimony in this proceeding shows that the Vallejo and Northern has never run any cars across the M Street bridge and has never in any way used the bridge. The Vallejo and Northern's position in relation to the bridge was that it owned a one-third interest therein but had never used the same for railroad purposes. The one-third interest in the bridge formerly belonging to the Vallejo and Northern now belongs to the Northern Electric, so that this company now owns a two-thirds interest in the bridge, while

the Oakland and Antioch owns a one-third interest.

The Northern Electric and the Vallejo and Northern now ask authority to sell to the West Side for the sum of \$140,593.69 both the franchise heretofore granted to the Vallejo and Northern by Ordinance No. 119 and the property right formerly owned by the Vallejo and Northern as the result of its payment of one-third of the cost of constructing the bridge.

The two protestant counties make no claim that the property interest in the bridge should not be assigned but they do protest against the transfer of the franchise rights formerly owned by the Vallejo and Northern as distinguished from that company's property interest in the bridge. The protestant Oakland and Antioch asks merely that in such transfer as may be made its interests as a one-third owner in the bridge may be protected. It is necessary to distinguish carefully between the right to use this bridge for the purpose of transportation, and the property rights therein arising from a payment of a portion of the money used to construct the same.

Referring to the first point, there seems much merit in the contention of the two counties that this Commission should not authorize the transfer by the Northern Electric of the rights which the Vallejo and Northern may have had to use the bridge for the purpose of conveying passengers, freight, baggage or express over the same. The evidence shows that the Vallejo and Northern never used this right. A quo warranto proceeding has now been brought by the State of California to declare this franchise forfeited. Furthermore, I desire to draw attention to the fact that the purpose for which the Vallejo and Northern was to use the bridge was for the purpose of transportation along its proposed route from the city of Sacramento to the city of Vallejo, while the purpose for which the West Side desires to use the bridge is for interurban passenger and possibly freight service from Sacramento across the bridge down the west side of the Sacramento River, a few miles to the headquarters of the West Sacramento Land Company and possibly

hereafter a few miles further to the town of Rio Vista. The two routes are entirely different. It may well be that the public authorities having control over the question of the granting of the franchise across the M Street bridge might be perfectly willing to grant a franchise in connection with the operation of a railroad of considerable magnitude and importance to the people of Sacramento, whereas they might be unwilling to grant such a franchise to a small line of railroad running only a few miles into Yolo county, and particularly so in a case in which the county has undertaken to limit the number of railroads for which it may grant franchises across this bridge. In my opinion, the West Side Railroad has no right to operate across the M Street bridge unless it first secures from the competent public authority the right to use this highway for its railroad purposes and that it can not secure such right by securing an assignment of the rights formerly held by the Vallejo and Northern. The West Side has as yet secured no franchise from the county of Sacramento and none from the city of Sacramento.

Whether this Commission should approve the exercise by the West Side of the rights which it may hereafter secure from the competent public authorities under the usual franchise, is a matter which, in my opinion, should not be determined until this Commission knows whether the public authorities are willing to grant such franchise and if so on what terms.

In view of the fact that no such franchise has as yet been secured, it seems premature for this Commission to pass on the question whether it will authorize the Northern Electric to sell to the West Side a part of its property interests in the M Street bridge. It certainly seems undesirable that a property interest in this bridge should be owned by any corporation or individual which does not need an interest in the same. Otherwise the interest of such person or corporation might serve to block a railroad company thereafter trying to enter the city of Sacramento over this bridge.

If the West Side is to secure a property interest in this bridge, it should be only after the competent public authorities have granted the necessary franchise or franchises and after the West Side has been authorized by this Commission to exercise the rights and privileges thus conferred.

I, accordingly, recommend that this petition be dismissed, without prejudice, to a further filing of the appropriate petition when the West Side has secured the necessary franchise or franchises from the city of Sacramento or the county of Sacramento, or both. It must be borne in mind in this connection that the city of Sacramento extends to the middle of the navigable portion of the Sacramento River and that this bridge is constructed on the line of M Street in the city of Sacramento. It must also be borne in mind that under the statutes of 1881 and 1907, hereinbefore referred to, the M Street bridge could not originally have been constructed without a franchise from the county of Sacramento and there seems much reason to hold that the county's original authority extends to the acquisition of interests therein by subsequent parties.

I submit herewith the following form of order:

O R D E R

NORTHERN ELECTRIC RAILWAY COMPANY, VALLEJO AND NORTHERN ~~XXXXXXXX~~ RAILROAD COMPANY and WEST SIDE RAILROAD having applied for an order authorizing the sale and transfer by the Northern Electric Railway Company and the Vallejo and Northern Railroad Company to West Side Railroad of such property interest and franchise as the Vallejo and Northern Railroad Company may have heretofore owned in the M Street bridge between Sacramento county and Yolo county, and a public hearing having been held upon said application, and the county of Sacramento, the county of Yolo and the Oakland, Antioch and Eastern Railway having appeared and protested against the

granting of said application, and the application having been submitted and the Commission finding that it can not authorize the transfer to West Side Railroad of such franchise rights to use the M Street bridge as the Vallejo and Northern Railroad Company may have had, and that the West Side Railroad has secured no franchise from the competent authorities for the use of said bridge for its line of railroad, and that it would be premature to pass upon the question of a transfer of any property interest in said bridge until West Side Railroad has secured the necessary franchise or franchises from the competent public authorities,

IT IS HEREBY ORDERED that such petition be and the same is hereby dismissed, without prejudice, however, to the right of petitioners hereafter to file another application when West Side Railroad shall have secured from the competent public authority the right and franchises to use the M Street bridge for the purpose of its business as a common carrier.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10th day of April, 1914.

John M. Lusk
H. L. Loveland
W. E. Gordon
Max Thelen

Commissioners.