

Decision No. ✓

ORIGINAL

Decision No. 1536

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
United Railroads of San Francisco,
E. H. Rollins and Sons and Union
Trust Company of San Francisco, for
an order authorizing the execution
of Car Equipment Trust.

Application No. 1076

William M. Abbott for applicant

EDGERTON, Commissioner.

O P I N I O N

This is an application by United Railroads of San Francisco, E. H. Rollins & Sons and Union Trust Company of San Francisco, for an order authorizing the execution of a Car Equipment Trust, and authorizing United Railroads of San Francisco to guarantee the payment of certain trust certificates to be issued thereunder.

United Railroads of San Francisco is in immediate need of 65 cars for use on its street car system in the City of San Francisco. The cost of these cars is shown by the evidence to be \$365,000, but being unable to purchase these cars direct, the railroad company proposes to enter into an agreement whereby the firm of E. H. Rollins and Sons will advance the purchase price, the title of the cars to be placed in Union Trust Company of San Francisco, and said Trust Company will issue certificates with these cars as security, in addition to which the United Railroads is to guarantee the payment of these certificates. United Railroads is to repay the money advanced in installments as follows:

§ 3,000.00 on the execution of the agreement
\$75,000.00 thereafter on a date not yet fixed, and
\$30,000.00 a year for ten years.

E. H. Rollins and Sons are to receive a commission for their services in this behalf and the railroad company is to pay interest on the \$300,000.00 of certificates at the rate of 5½ per cent per annum. These certificates will mature serially in equal installments of \$30,000.00 a year.

There is no question but what these cars are urgently needed. Representatives of the City of San Francisco appeared at the hearing and made strong representations as to the great need for the additional facilities which would be provided by the putting of these additional cars into service. These representatives of the City urged that even more cars were needed than were here provided for, because of the expected enormous increase in traffic which will be brought about by the holding of the Panama-Pacific International Exposition in San Francisco in 1915.

While it is admitted that these and possibly more additional cars are urgently needed at this time, it must also be admitted that instead of borrowing the money to purchase them, the surplus of the railroad company should be available for this purpose, thus avoiding the necessity of paying a considerable rate of interest.

The books of the company on June 30, 1913, show a surplus of \$462,139.24, but investigation discloses that this is not a true surplus and does not represent accumulated earnings. In fact, we are led to believe from investigations thus far made that an exact statement of the railroad's condition would show a considerable deficit.

In this connection attention is called to a financial transaction of this railroad company which materially affects

its financial condition, and also shows that there should be no need for borrowing money to purchase these much needed cars at this time.

Of date August 21, 1912, this resolution appears upon the Minutes of the Board of Directors of United Railroads of San Francisco:

"WHEREAS, the Board of Directors of this Company, on the 16th day of August, 1912, unanimously adopted the following resolution:

RESOLVED, that all sums of money hitherto drawn by the President of this Company, and all advances hitherto made by him to, or disbursements made on account of, any person or corporation, be and the same are hereby, ratified, approved and confirmed; and be it further

RESOLVED, that the President of this Company be, and he is hereby, authorized to draw such further sums and to make such further advances to, or disbursements on account of any corporation, as he may deem for the best interests of this company.

NOW, THEREFORE, BE IT RESOLVED, by the Stockholders of this Company, that the action of the Board of Directors in the adoption of the above resolution, be, and the same is hereby ratified, approved and confirmed."

We are informed that Mr. Patrick Calhoun, who was then the president of this railroad company, in his own name subscribed for 49,991 shares of the common capital stock of Solano Irrigated Farms, Inc., and the balance sheets of the United Railroads show that the following amounts were applied from that company's funds to the Solano project:

March 1913	\$577,815.70
April 1913	160,000.00
May 1913	158,900.00
June 1913	180,000.00
July 1913	19,400.00

No proof was made to this Commission that any part of this money was actually invested in the so-called Solano project,

but we are confronted by the fact that Mr. Calhoun, under authority of the Board of Directors, and ratified by the stockholders, took from the treasury of applicant \$1,096,000, and whether he invested it in the Solano project or not is unimportant in the consideration of this railroad company as a public utility.

It seems that upon the taking of office by Mr. Jesse Lilienthal, the present president of the railroad company, Mr. Calhoun was forced to execute a promissory note for \$1,096,000, payable one day after date, in favor of the railroad company, secured by stock of the Solano project, but the judgment of the value of this promissory note is perhaps best indicated by the fact that Mr. Lilienthal immediately wrote this note down in the books of the company as of a value of \$1.00.

We hesitate to put in words a proper characterization of this transaction. In plain terms, Mr. Calhoun took from the funds of this public utility corporation over \$1,000,000 when every available dollar was sorely needed properly to increase the facilities of this company so as to serve the community of San Francisco, and at a time when this same company was urging upon this Commission the necessity of issuing further bonds to pay off maturing obligations, and also at a time when admittedly the outstanding obligations could not be paid at maturity by approximately \$20,000,000.

United Railroads has been paying, and now is paying, dividends on first preferred stock amounting to \$350,000 a year, and these same stockholders apparently joined in the confirmation of the acts of Calhoun in looting the company of this money.

This whole transaction is a fraud, not only upon the public which is dependent upon this utility for its street car service, but also upon the bond and note holders of this utility because to the extent that money is diverted to improper purposes these creditors are defrauded.

Mr. Calhoun and the stockholders seem to have joined in this act of plunder, and this being so, the stockholders while having the right to be generous, have not the right to be generous at the expense of the public and the creditors, and the stockholders should either voluntarily or by force enter into a scheme of procedure for the future which will divert to the payment of its obligations and the proper maintenance of service, every available dollar, even though this would mean the foregoing of dividends for a considerable number of years.

This transaction did not come to the attention of the Commission by voluntary statement of the officers of the company, but was discovered through the Auditing Department of the Commission, and it is the final and convincing proof that drastic measures are necessary to safeguard public interest of this enormously important public utility service. Unless some plan is put in effect which will thoroughly safeguard the revenue of this company so that it will be used for the proper purposes of paying off obligations and producing efficient service, the history of this company indicates that it will proceed with no proper regard for its obligations to the public and its creditors until disaster overtakes its finances, and meantime severe suffering will be caused the public through its failure properly to carry out its functions. We say this realizing that the present president of this company, Mr. Jesse Lilienthal, has given evidence of an intention, so far as he is empowered, to conserve the finances of this company, but attention must be called to the fact that Mr. Lilienthal's tenure of office and his policy are absolutely in the hands of the same stockholders who ratified this peculiar act of Mr. Calhoun in taking this \$1,000,000, and it is also a fact that some of the officers who participated with Calhoun are still the officers of this corporation.

It is to be regretted that we cannot accept the known

probity of Mr. Lilienthal or his declarations of purpose as persuasive of the fixed policy of this company.

I recommend that immediate and serious consideration be given to further proceedings by the Commission designed to bring about the re-adjustment of the affairs of this corporation as the facts set out in the foregoing opinion show to be urgent.

But, as has heretofore been said, the cars proposed to be purchased are urgently needed and there are no available funds with which to purchase the same, and as the proposed scheme of financing this purchase upon the car certificate plan provides adequate security for the money obtained, and as this plan may be considered as separate and apart from the general financing of this corporation, I recommend that the application be granted, and submit herewith the following form of order:

O R D E R

Application having been made by United Railroads of San Francisco, E. H. Rollins and Sons and Union Trust Company of San Francisco for an order authorizing the execution of a car equipment trust, and a public hearing having been had, and it appearing to the Commission that said application should be granted,

IT IS HEREBY ORDERED by the Railroad Commission of the State of California that United Railroads of San Francisco is hereby authorized to enter into an agreement with E. H. Rollins and Sons and Union Trust Company of San Francisco, whereby there shall be purchased for the use of United Railroads of San Francisco, 65 cars at a total cost to the railroad company of \$378,500. The railroad company to pay for said cars in installments and to have immediate possession thereof, the title to the same, however, to be placed in Union Trust Company of San Francisco until full payment therefor is made. The Trust Company is to issue

car trust certificates, with these cars as securities, which certificates will bear 5½ per cent interest, the payment of principal and interest to be guaranteed by the railroad company. Said agreement and contract shall be in the form as shown in Exhibit "A", attached to the application herein and on file with the Commission.

United Railroads of San Francisco shall make report to this Commission immediately upon the execution of the contract herein authorized.

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 22nd day of May, 1914.

John M. Eashleman
H. H. Woodland
Alex. Gordon
Wm. Thelen
Edwin C. Edgerton

Commissioners.