

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of the MILL VALLEY and MT. TAMALPAIS SCENIC RAILWAY for an order authorizing it to issue 1500 shares of capital stock.

Application No. 32.

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Thomas, Beedy and Lanagan for applicant.

THELEN and LOVELAND, Commissioners.

O P I N I O N.

This is an amended application for an order of this Commission authorizing the issue of a total of 1500 shares of capital stock for the purposes hereinafter specified.

Applicant was incorporated on January 15, 1896, and owns and operates a scenic railway from Mill Valley in Marin County, along the slopes of Mount Tamalpais to its crest, with a branch line running from Mesa Station, also known as the Double Bow Knot, to the Muir Woods, on the southerly slope of the mountain. In connection with its railroad, applicant has constructed and operates the Tavern of Tamalpais near the crest of the mountain and the Muir Inn at the end of the branch line in the Muir Woods. Applicant also owns and has leased out the tavern at the extreme westerly point of its line of railway, known as West Point. Applicant's chief revenue is derived from passenger earnings from tourists and other sight seers.

Applicant's total authorized capital stock is 2000 shares of the par value of \$100 each, making a total of \$200,000. All of this stock has been issued. One hundred and ten shares were issued to the promoters for their services, three hundred and seventy-five

shares were sold at \$110 each and the remaining number of shares were sold at par. Applicant's total ^{authorized} bonded indebtedness is \$100,000 secured by first mortgage and \$100,000 secured by second mortgage, the mortgage or deed of trust in each case running to Union Trust Company of San Francisco. The first deed of trust was executed on April 20, 1899, and the second on October 5, 1908. The bonds in each case bear interest at the rate of 5% and are payable twenty years from date. Of the bonds so authorized, all the bonds of the first authorization, amounting to \$100,000, have been issued, but there is on deposit with the Union Trust Company of San Francisco a sinking fund account of \$29,688.97 with some accumulated income to redeem the bonds at maturity. Of the second mortgage bonds, bonds of the face value of \$30,500 are now outstanding. To redeem these bonds applicant has accumulated a sinking fund of \$9,000, with some accumulated income. On June 30, 1911, applicant also owed \$10,500 on bills payable and \$6,904.04 to sundry creditors. Applicant's statement of assets, as filed with the application as of June 30, 1911, shows a total of \$452,944.22. The Commission's engineers have as yet reached no determination on the data which applicant has submitted to them as showing the value of its property, which value applicant now claims to be considerably in excess of said sum of \$452,944.22. Before the fire of April, 1906, applicant paid dividends at the rate of 4% per annum. After the fire, no dividends were paid for some four years, but since May 10, 1910, dividends at the rate of 5% per annum have been regularly paid. Earnings in excess of the 5% dividend have been put back into the property or used to create sinking funds to take care of the outstanding bonded indebtedness.

Of the 1500 shares of capital stock which applicant desires to issue, 781 are to be issued for the reimbursement of moneys claimed to have been actually expended from income within five years next prior to the filing of the application, for the acquisition of property,

and the construction, completion, extension and improvement of facilities, under the provisions of section 52 (b) of the Public Utilities Act; 50 shares are to be issued to refund an outstanding obligation; and the remaining shares are to be issued for the acquisition of property, and the construction, completion, extension and improvement of facilities. We shall proceed to analyze these various items in detail.

The total of \$78,100 for reimbursement of moneys expended from income consists of the following items:

Additions and betterments-----	\$57,875.07
Filling trestles, hitherto charged to operating expense-----	4,353.99
Invested in sinking funds-----	16,000.00
	<u>\$78,229.06</u>

The additions and betterments claimed to have been bought from income are as follows:

Spur track - Mesa Station to Muir Woods-----	\$19,409.11
Rolling Stock-----	
Locomotive No.5-----	\$7,741.72
Locomotive No.7-----	8,705.73
3 Passenger Cars-----	5,701.69
Automobile No.2-----	2,441.20
Gravity Car No. 6-----	589.19
Inspection Car-----	308.12
Section Car-----	136.53
	<u>25,624.18</u>
Real estate adjoining Muir Woods-----	17,000.00
Hotel extension-----	2,000.00
Tamalpais Tavern - additional furniture & Fixtures	387.90
Muir Inn-----	12,215.41
Muir Inn - furniture and fixtures-----	3,856.40
Tents and tent furniture and fixtures -Muir Woods	1,717.45
Store building - Mill Valley-----	106.72
Cabins - West Point-----	213.86
Telephone line -main line and woods-----	405.54
Trails-----	148.65
Wagon-road - West Point to Willow Camp-----	168.95
Willow Camp and Bolinas Road extension -- preliminary survey-----	1,006.65
Redwood Canon - wagon roads and trails-----	3,039.80
Oil Tank-----	373.20
Binoculars-----	117.00
Filing cabinet-----	50.00
Angle plates, track bolts and nut-locks - all new construction-----	534.25
	<u>\$88,375.07</u>
Funds secured through sale of 20 year 5% bonds in October 1908 and February 1909-----	<u>30,500.00</u>
	<u>\$57,875.07</u>

Section 52 (b) of the Public Utilities Act, under which the authorization is sought, provides in part as follows:

"A public utility may issue stocks and stock certificates, and bonds, notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, for the following purposes and no other, namely, for the acquisition of property, or for the construction, completion, extension or improvement of its facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations or for the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the public utility not secured by or obtained from the issue of stocks or stock certificates, or bonds, notes or other evidences of indebtedness of such public utility, within five years next prior to the filing of an application with the commission for the required authorization, for one of the aforesaid purposes except maintenance of service and replacements, in cases where the applicant shall have kept its accounts and vouchers for such expenditures in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which such expenditure was made; provided, that such public utility, in addition to the other requirements of law, shall first have secured from the commission an order authorizing such issue and stating the amount thereof and the purpose or purposes to which the issue or the proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property or labor procured or paid for by such issue is reasonably required for the purpose or purposes specified in the order, and that, except as otherwise permitted in the order, in the case of bonds, notes or other evidences of indebtedness, such purpose or purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income."

It will be noted that in the case of an issue of securities to refund money expended from income such moneys must have been expended within five years next prior to the filing of the application. The application in this case is filed May 2, 1912. The period of time to be considered is consequently from May 1, 1907 to May 1, 1912. As applicant's figures covered the period from July 1, 1906 to June 30, 1911, it has been necessary for this Commission's department of statistics and accounts to revise the figures submitted, by subtracting additions and betterments paid for prior to May 1, 1907 and adding those paid for subsequent to June 30, 1911 and up to May 1, 1912. Of the amounts submitted by applicant, the following were expended prior to May 1, 1907:

Spur track -Mesa Station to Muir Woods-----	\$16,768.18
Locomotive No. 5-----	7,741.72
Inspection Car-----	308.12
Redwood Canon - wagon road-----	314.50
	<u>\$25,132.52</u>

Subtracting this amount from the total of \$57,875.07 submitted by applicant and adding \$1,136.51 for expenditures for additions and betterments from July 1, 1911 to May 1, 1912, we have a revised total of----- \$33,879.06 applied for in this connection.

We find that because of the unusual character of applicant's business, which consists largely in attracting tourists and other pleasure seekers to Mt. Tamalpais and making the mountain accessible to them, its taverns, tents, wagon roads and trails are properly a part of its railway business and that the amounts specified for these items may properly be capitalized, subject to the observations hereinafter contained. The amount of \$1,006.65 for preliminary survey for the Willow Camp and Bolinas Road extension, which extension has not been made and for which no estimate has been presented under the head of future construction, should be deducted from applicant's estimate, and should not be capitalized, at least until the project has been executed. The other items in the foregoing list, as revised, amounting to \$32,872.41, may be allowed.

Applicant also asks authority to issue capital stock against an item of \$4,353.99 for expenditures incurred in connection with filling trestles. These expenditures have been charged on its books to operating expenses. As bearing on the question of what portion, if any, of this amount, may properly be capitalized, we refer to Account A-7 - Bridges, Trestles and Culverts - of the classification of expenditures for additions and betterments, as prescribed on July 1, 1910, by the Interstate Commerce Commission for steam roads, and reading as follows:

"When a bridge or trestle, or a part of a bridge or trestle, is converted into a fill the cost (estimated if not known) of the bridge or trestle if completely filled, or of such part of it as may be filled, should be credited to this account and charged, less salvage, to Operating Expenses. Such part of the original structure as would equal in cost the temporary trestling that would have been necessary to the construction of the fill in the first instance should be considered as salvage. The cost of filling, including such salvage, should be charged to Account A-3, Widening Cuts and Fills."

We consider this rule a reasonable one, but the evidence as presented has not been sufficient to enable the Commission to determine what portion of this amount is properly chargeable to additions and betterments. If applicant so desires, it may hereafter present additional evidence as to this item, whereupon the Commission will make an order based upon the principle of segregation established by the Interstate Commerce Commission.

Applicant also asks authority to capitalize the sum of \$16,000, which represents amounts taken from income in excess of dividends and invested in sinking funds for the purpose of retiring the bonds under its two mortgages or deeds of trust. Applicant claims that this is money spent from income for the lawful refunding of its obligations and that consequently the item is brought within the provisions of the Public Utilities Act. We have examined the decisions of other railroad and public service commissions, and have communicated directly with both the public service commissions in New York, but have been unable to find any authority for such claim. The case most nearly in point is the Application of the Bronx Gas and Electric Company for authority to issue bonds, which application was decided by the Public Service Commission for the first district of New York, on October 26, 1909 under a statute containing the same language as that of the Public Utilities Act hereinbefore quoted. The New York Commission there held that the Commission had no authority, under the statute, to approve an issue of bonds to be used to reimburse the applicant for moneys spent from income in such a way as to deplete the surplus and reserve funds. On principle we find ourselves unable

to agree with applicant in its contention on this point. The money which applicant has placed in its sinking funds it has derived from the rates paid by the public in excess of dividends. If the principle here contended for be sustained, a utility could start on a shoestring, then collect from the public rates high enough to pay off its entire indebtedness, so that it would own its property free and clear, and then capitalize these same additional rates which the public has paid, and finally use this capitalization in turn before this Commission or elsewhere as a basis for further additional rates. It should be remembered also that this is not a case where it is desired to sell additional capital stock for the purpose of putting the proceeds into the plant. Applicant asks for a straight stock/^{dividend} of \$16,000 to be paid to its present stockholders in proportion to the amount of stock held by them respectively. As far as any legitimate use of the stock is concerned, the failure to permit the issue of the \$16,000 of additional stock will not injure the stockholders. Ten shares of stock worth \$100 each have the same intrinsic value as twenty shares worth \$50 each. The only advantage of having twenty shares is the possibility of selling them to the public for more than they are worth or to use their face value as distinguished from their real value for rate-fixing or other purposes before this Commission or the courts. This portion of the application will be denied.

It should be distinctly understood that this Commission does not in its decision on this application commit itself to the extent that it will necessarily authorize the capitalization of moneys spent from income whenever the fact of such expenditure for the purposes authorized by law is shown. The Public Utilities Act gives to the Commission in this regard wide discretionary power. The Commission will on such applications always take into consideration the amount of capital stock and of bonds, notes or other evidences of indebtedness already outstanding and will in each case determine on the facts of that case whether in view of all the

facts, including particularly the amount of stock and securities already outstanding, the additional capitalization prayed for should be permitted.

Applicant further desires to sell 50 shares of stock at par to refund an outstanding note in the amount of \$5000 held by the First National Bank of San Francisco and also 669 shares for the acquisition of property and the construction, completion, extension and improvement of ^{its} facilities. Of the proceeds of said note, the sum of \$3,150.00 has been paid for certain property which is to be used for a yard in Mill Valley and the remainder was used in payment of current expenses. While section 52 of the Public Utilities Act permits the issue of stocks and securities for the discharge or lawful refunding of the obligations of a public utility, it is clear that such obligations must have been incurred for purposes which are proper subjects of capitalization. Consequently, while applicant's prayer will be granted in so far as affects the amount of \$3,150.00 spent for the acquisition of property at Mill Valley, it will be denied with respect to the remaining amount of \$1,850.00, which amount is properly chargeable to operating expenses.

Applicant further presented an itemized list of property which it desires to acquire and a detailed description of contemplated construction, completion, extension and improvement of its facilities and asked for permission to issue stock at par to the extent of \$50,000 at present and additional shares hereafter up to a total of \$66,900 to secure funds to pay for such property and improvements. At the hearing it developed that applicant's estimate with reference to certain of these items were entirely too low and that certain items had been omitted. This Commission will be just as ready to increase the amounts asked for by an applicant for proper purposes where it finds that the estimates are too low as it will be to cut down or entirely eliminate items which are excessive or which are unlawful. The items as thus revised ^{and increased} with reference to their amounts are as follows:

A new locomotive	\$8,755.
Two new passenger cars	4,250.
A 600 foot inclined railway from the Muir Inn, located at the terminus of its branch line to the bottom of the canyon known as "Muir Wood" belonging to the Federal Government	9,000.
Cost of transforming its local train service from steam to electricity	4,025.
Poles and wires from the Muir Inn to the top of Mt. Tamalpais for conducting light and power	4,000.
New machine shop	6,000.
Machinery and tools for new machine shop	6,000.
Carpenter shop with car shed attached	4,500.
Cost of lot for above	3,150.
Grading and filling lot for above	2,500.
New tie plates	1,100.
New straps	2,000.
New ties	3,000.
Further improvements not yet definitely fixed upon	717.
Total	<u>\$59,000.</u>

The item for the cost of transforming local train service from steam to electricity applies only to a small portion of applicant's line of railway running northerly from the town of Mill Valley. The item for poles and wires from the Muir Inn to the top of Mt. Tamalpais for conducting light and power is a liberal one in amount. As it now stands, it contemplates the performance of this work by applicant itself. If applicant can enter into some arrangement by which a portion of this expense is to be borne by the company furnishing the light and power, the amount authorized will not be expended to the extent of the difference. The cost of lot for carpenter shop has already been taken care of in this opinion in passing on the note for \$5000, which included this item. The tie plates are new plates to be installed where none now exist and the item is a proper one. The straps are to take the place of

existing straps which are worn out. This item is properly chargeable to maintenance and should not be capitalized. The same is true as to the item for new ties, which are to take the place of existing ~~ties~~ worn out ties.

Eliminating the items of which we have disapproved, as above stated, we find that items in the amount of \$50,850.00 for the acquisition of property and the construction, completion, extension and improvement of facilities may properly be covered by sales of additional capital stock.

The items approved on this application are accordingly as follows:

1. Amounts hitherto expended from income for purposes proper to be capitalized-----	\$32,872.41
2. Discharge of obligation-----	3,150.00
3. Moneys necessary for acquisition of property and for construction, completion, extension and improvement of facilities-----	50,850.00
	<u>\$86,872.41</u>

We find that the moneys to be derived from the sale of additional capital stock to cover the second and third of the above items are reasonably necessary for such purposes and that the purposes for which stock is hereby authorized to be issued are not in whole or in part reasonably chargeable to operating expenses or to income. Applicant's president testified that the stock could probably be sold at par or over and we are convinced that such is the case. We accordingly recommend that applicant be authorized to issue stock for the purposes and in the amounts hereinafter in the order specified and submit herewith the following form of order:

O R D E R.

Application having been made to the Railroad Commission of the State of California by MILL VALLEY and MT. TAMALPAIS SCENIC RAILWAY for an order authorizing the issue by said company of 1500 shares of its capital stock to the amount of \$150,000, par value, and a hearing having been duly held upon said application and it appearing to the Commission that the money to be procured from that portion of the stock which is ^{herein authorized} to be sold is reasonably required for the purposes hereinafter specified and that the purposes for which said stock is to be issued are not in whole or in part reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED that MILL VALLEY and MT. TAMALPAIS SCENIC RAILWAY be and the same is hereby authorized to issue its common capital stock in the amounts and for the purposes hereinafter designated and subject to the conditions hereinafter specified, and not otherwise, to-wit:

1. For the reimbursement of moneys actually expended from income within five years next prior to the filing of the application with this Commission for lawful purposes, the sum of \$32,872.41, capital stock to represent the same to be issued at par to the present owners of applicant's capital stock in proportion to the amount of capital stock which they at present respectively own.
2. For the discharge of the obligation of applicant to First National Bank of San Francisco on note for \$5000, the amount of \$3,150.00.
3. For the acquisition of property and the construction, completion, extension and improvement of its facilities the following amounts, the amount to be spent on each ^{item} not to exceed the amount herein authorized without having secured the further consent of this Commission:

A new locomotive	\$8,755.
Two new passenger cars	4,250.
A 600 foot inclined railway from the Muir Inn, located at the terminus of its branch line to the bottom of the canyon known as the "Muir Woods" belonging to the Federal Government	9,000.
Cost of transforming its local train service from steam to electricity	4,028.
Poles and wires from the Muir Inn to the top of Mt. Tamalpais for conducting light and power	4,000.
New machine shop	6,000.
Machinery and tools for new machine shop	6,000.
Carpenter shop with car shed attached	4,500.
Grading and filling lot for above	2,500.
New tie plates	1,100.
Further improvements not yet definitely fixed upon	717.
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	\$50,850.

4. The stock hereby authorized to be issued for the purposes specified in paragraphs 2 and 3 hereof shall be issued for money only at not less than par.

5. Applicant shall keep a true record showing the disposition of each share of capital stock hereby authorized to be issued and of the proceeds of each share of stock hereby authorized to be sold, showing particularly the purposes to which such proceeds have been applied, and on or before the 25th day of each month applicant shall make a verified report to this Commission stating the disposition of such stock and of the proceeds thereof and in this and all other respects applicant shall comply fully with the Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

6. The authority hereby given to issue capital stock shall apply only to stock issued by applicant prior to the 30th day of June, 1913.

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 23rd day of August, 1912.

H. S. Loveland
W. J. ...
Max Thelen
Commissioners.