

ORIGINAL

Decision No. 242

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Decision No. 242

In the Matter of the Application of
TIDEWATER SOUTHERN RAILWAY COMPANY
for an order authorizing an issue of
600,000 shares of common stock and
\$750,000, face value, of bonds.
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Application No. 38.

Byron A. Rearee for applicant.

TEELEN, Commissioner.

SUPPLEMENTAL OPINION.

On June 29, 1912, this Commission made its order in the proceeding entitled as above, authorizing the issue by applicant of specified amounts of its capital stock and bonds for the purposes in said order set forth. Those portions of the Commission's order which referred to the amounts of capital stock which applicant might issue were as follows:

1. Applicant was authorized to issue 2,842,285 shares of its common stock of the par value of \$1.00 each and 57,110 shares of its preferred stock of the same par value, share for share, to the other holders of The Tide Water and Sputhern Railroad Company and The Tide Water and Southern Transit Company, in exchange for the shares of stock owned by them in said respective companies. The applicant company is a consolidation of these two companies. Of the shares so authorized, certificate for 2,000,000 shares of common stock is issued for voting purposes only, and will be cancelled and returned to the treasury on or before July 1st, 1919. Another certificate for 188,600 shares of common was immediately returned to the treasury for cancellation, in accordance with this Commission's order, 600 shares representing shares issued to directors. This leaves 653,085 shares which, under this Commission's order, were to be issued to other share holders in the two constituent companies.

2. Applicant was authorized to issue 300,000 shares of

its common stock of the par value of \$1.00 each, or so much thereof as may be necessary, to be delivered to persons who had made their notes to The Tide Water and Southern Railroad Company for certificates of stock in said Company. It was represented to the Commission that it would take about 300,000 shares of stock to meet these obligations.

3. Applicant was authorized to issue 50,000 shares of its ^{capital} common stock to be delivered to salesmen who were alleged to have sold stock in The Tide Water and Southern Railroad Company, in return for their services, but the order distinctly specified that none of these shares were to be issued unless the person to whom they were to issue had filed with this Commission an affidavit setting forth the facts connected with the contract of agency and the sale of the stock.

4. Applicant, finally, was authorized to issue 250,000 shares of its common capital stock, to be sold so as to net the Company not less than 80 per cent of the par value thereof. When applicant filed its first monthly report under said order, it at once appeared that certain portions of the order were being violated. The Commission thereupon made its order dated September 17, 1912, reciting the facts and suspending its former order dated June 29, 1912, until applicant should have satisfied the Commission that it has made good the violations of the Commission's order, and until the further order of the Commission.

From investigations made by this Commission's department of statistics and accounts, it now appears that this Commission's original order was violated in the following respects: The 50,000 shares which were to be issued to salesmen in return for their services, were issued without filing with the Commission the affidavits which were required in this Commission's order. Again, it appears that certificates for 94,407 shares of stock were issued on notes before payment of the same, so that applicant finds itself in the position of having notes for these certificates instead of cash. It appears further, that 22,180 shares of stock were issued without any color of authority at all.

It appears further, that applicant has been of the impression that the Commission's order would be complied with as to the 250,000 shares of stock to be sold if 80 cents per share were turned in to the treasury, even though some of this stock has been selling as high as \$1.15 and \$1.25 per share, whereas, as a matter of fact, applicant is entitled to pay only up to 20 per cent, if necessary, for commissions and expenses in connection with the sale of the stock.

In view of these circumstances, the Commission suspended its previous order in its entirety until the violations of that order were made good. The Commission's supervision over the issues of stocks, bonds and other securities of public utilities is among the most important of its functions. It is the duty of the Commission to see to it that stocks, bonds and other securities of such utilities are issued only for the purposes authorized by law and that the proceeds thereof are applied only to the purposes and in the amounts specified in the Commission's orders. This Commission will not permit any utility, either through carelessness or design, to disobey its orders, either in letter or in spirit. If the Commission becomes convinced that any of its stock and bond orders are being knowingly violated, it will at once see to it that the necessary prosecutions or other punitive proceedings are instituted. Where, however, the violations are the result of carelessness or ignorance, the Commission may as far as it is concerned, at times resort to ^{the} less drastic procedure of revoking its order until the violations are made good, but of course, such action on the part of the Commission does not prevent prosecutions by other officials. In any event, the Commission will insist that its orders referring to the issue of stocks, bonds and other securities, as well as its other orders, are strictly obeyed. I am convinced, after a careful investigation, that in the present case the violations have been due to carelessness and inefficient business methods, and not to a willful intention to violate the order. Applicant has promptly taken steps to remove the violations of this Commission's order, and Mr. Byron A. Bearce, its President, has agreed to turn in to the corporation from his personal stock, a certificate for 166,587 shares, so as to fully comply with the Commission's order and fully to protect

the applicant. The amount of 166,587 shares consists of 94,407 shares which were issued on notes prior to the payment of the same, 50,000 shares which were issued as commission to salesmen without the filing of the necessary affidavits, and 22,180 shares which were issued without any color of authority. Authority will hereafter be given to applicant to issue to Mr. Bearce shares of stock on notes and commissions, as paid, and included in said total of 166,587 shares.

Applicant has now filed with this Commission a supplemental application, asking for this Commission's order as follows:

The supplemental application states, that by reason of duplicate issues of capital stock of The Tide Water and Southern Railroad Company, one of applicant's constituent corporations, amounting to 29,066 shares, and an item of 5606 shares for correction purposes, only 618,413 shares of applicant's common stock should be issued to stockholders of said constituent corporation, instead of 653,085 shares. Applicant asks that this Commission's order dated June 29, 1912, be amended in this respect, and I recommend that the application be granted in this particular.

Applicant asks that paragraphs 2 and 3 of this Commission's original order, referring to the issue of 300,000 shares and 50,000 shares respectively of its common capital stock, be modified so as to permit the sale by applicant of 384,672 shares of its capital stock so as to net applicant "not less than 80 cents on the par value of \$1.00 per share, provided further, that in no case shall the par value of the stock issued be greater than 1 1/4 times the amount of cash collected for the same." The amount of 384,672 shares is derived as follows: To the 34,672 shares which it now appears unnecessary to issue to the original stockholders of the constituent corporations is added the 300,000 shares to be issued to subscribers on payment of their notes and the 50,000 shares which were to be issued to applicant's salesmen for commissions. I see no objection to the granting of this portion of the application, provided that enough of these shares of stock be reserved so as to be ready for issue when the holders of the notes pay the same, and provided further, that no

commission be paid on any sales or notes on which commission has heretofore been paid, and provided further, that on such portion of this stock as is sold, applicant be permitted to pay for commission and expenses not to exceed 20 per cent on the cash secured for such stock, the net amount of cash to be received by applicant to be in no case less than 80 cents per share. The cash derived from the sale of this stock should be used for the purposes specified in Section 4 (b) of this Commission's original order, being for the acquisition of the property and the construction, completion, extension and improvement of the facilities specified in "estimate of cost of completion of the Tidewater Southern Railway from Stockton to Turlock," which is a part of applicant's "Exhibit G" attached to the original application.

The supplemental application further asks that applicant be authorized to issue to holders of its preferred stock, amounting to \$57,110, common stock in an equal amount at par, the preferred stock for which exchange is thus made to be returned to the treasury and cancelled. I recommend that this portion of the application be granted.

If applicant issues all the stock which has been authorized in the original order as modified by this supplemental order, it will have outstanding common stock as follows:

2,000,000 shares	- for voting purposes only,
618,413 shares	- issued to stockholders of The Tide Water and Southern Railroad Company,
384,672 shares	- to be issued to makers of notes and sold under this order,
250,000 shares	- to be sold under paragraph 4 of this Commission's original order.

3,253,085 shares	

Applicant will also have outstanding preferred stock in the amount of 57,110 shares, which it may exchange for common stock of the same amount. If so exchanged, the total of common capital stock which applicant may issue will amount to 3,310,195 shares, of which certificate for 2,000,000 shares is for voting purposes only.

I submit herewith the following form of order:

ORDER.

This Commission having heretofore made its order dated September 17, 1912, in the proceeding entitled as above, suspending until the further order of this Commission its previous order therein, dated June 29, 1912, and applicant having offered to make good its violations of Commission's said order dated June 29, 1912, and having filed with this Commission its supplemental application, dated September 26, 1912, and due consideration having been given by the Commission to all matters at issue,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Section 1 of this Commission's order dated June 29, 1912, in so far as it authorizes applicant to issue 2,842,285 shares of its common stock of the par value of \$1.00 each, is hereby amended so as to provide for the issue only of 2,807,013 shares. Said paragraph 1 of said order shall remain unaffected as regards the 57,110 shares of preferred stock, the 188,600 shares of common stock and of the certificate for 2,000,000 shares of common stock therein referred to, the effect of this amendment being, that applicant instead of having the right to issue to other stockholders of The Tide Water and Southern Railroad Company 653,085 shares of its common stock, shall have the right to issue to them only 618,413 shares of its capital stock.
2. Sections 2 and 3 of this Commission's order dated June 29, 1912, are hereby amended so as to provide that applicant may sell 384,672 shares of its common capital stock on the following conditions and not otherwise, to-wit:
 - (a) Said stock shall be sold for cash only.
 - (b) Enough of said 384,672 shares shall be reserved by applicant to be issued on outstanding notes as paid.
 - (c) The proceeds from the sale of said stock shall be applied to the following purposes only: For the acquisition of the property and the construction, completion, extension and improvement of the

facilities specified in "estimate of cost of completion of the Tidewater Southern Railway from Stockton to Turlock," which is a part of applicant's "Exhibit G" attached to its original application in this matter.

3. On all stock authorized to be sold, either in this order or in this Commission's order dated June 29, 1912, applicant may pay for commission and other expenses connected with the sale of said stock, an amount not to exceed in any case 20 per cent of the sale price of the stock, provided that in no case shall stock be sold so as to net applicant less than 80 cents per share in cash. In no case shall commissions be paid on any sales or notes on which commission has already been paid.
4. Applicant is hereby authorized to issue 57,110 shares of its common ~~xxxx~~ capital stock in exchange for 57,110 shares of its preferred capital stock now outstanding, share for share.
5. The effectiveness of this order and of every portion thereof is subject to the express condition precedent, that there shall first have been turned in to applicant's treasury for cancellation, certificates or ~~xxxxxxx~~ certificates of its common capital stock in the amount of 166,587 shares, and that applicant's secretary shall have given to this Commission written notice that such certificates have been turned in and cancelled of record on applicant's books.
6. Applicant shall keep separate, true and accurate accounts, showing the disposition made of every share of stock hereby authorized to be issued and showing the receipt and application in detail of the proceeds of all shares of stock hereby authorized to be issued and sold, and on or before the 25th day of each month, applicant shall make a verified report to the Commission, stating the sale or other disposition of such shares of stock during the preceding month, the terms and conditions of sale or other disposition, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No.24, which order

in so far as applicable, is made a part of this order.

7. The authority hereby given to issue shares of stock shall apply only to shares of stock issued by applicant on or before the 30th day of June, 1913. If at that time any of said stock may not have been issued, applicant may make further representations to the Commission.

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

Dated at San Francisco, California, this 30th day of September, 1912.

John M. Cushman

H. H. ...

Edmund D. Edgerton

Max Thelen

Commissioners.