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Decision _____

ORIGINAL

Decision No. 2833

BEFORE THE RAILROAD COMMISSION OF THE
STATE OF CALIFORNIA.

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In the matter of the Application of)
SAN DIEGO AND SOUTH EASTERN RAILWAY)
COMPANY, a corporation, for an order) Application
authorizing the renewal of a note.) No. 1883.

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R.G. Dilworth for applicant.

BY THE COMMISSION.

O P I N I O N

This is an application of SAN DIEGO AND SOUTH EASTERN RAILWAY COMPANY, operating in San Diego county, for authority to issue a promissory note in the sum of \$25,000.

On August 26, 1912, applicant issued a 5 per cent one-day promissory note in the sum of \$25,000 to the First National Bank of San Diego. The proceeds from this note were used to reimburse the company in part for additions and betterments made between March 2, 1912, and the date when the note was issued. These betterments included the purchase of certain real estate, additional rolling stock, etc. Subsequently, this note was renewed for a period of four months from November 6, 1914, interest being increased to 6% per annum. Similarly, on March 6, 1915, and July 6, 1915, the note was again renewed, each time for a four months period. Upon the last renewal of the note, the combined terms thereof exceeded by one day the time within which notes

may be issued without this Commission's consent. Applicant in its petition states that this violation of the Public Utilities Act arose through inadvertence, and asks to have the note dated July 6, 1915, ratified.

Section 52 (d) of the Public Utilities Act provides in part as follows:

"All stock, and every stock certificate, and every bond, note, or other evidence of indebtedness of a public utility issued without an order of the Commission authorizing the same then in effect shall be void."

This Commission has no power to make valid an act which is absolutely void. In this case, it appears that the note in question was given for capital purposes, and that its renewal in violation of the Public Utilities Act was unintentional. Under these circumstances, it appears reasonable that applicant should be permitted to cancel the note illegally issued and execute a new note in lieu thereof.

In addition to the note in question, applicant on June 30, 1915, had outstanding promissory notes as follows:

| <u>DATE OF ISSUE</u> | <u>AMOUNT</u> | <u>DATE OF MATURITY</u> | <u>RATE OF INTEREST</u> |
|----------------------|---------------|-------------------------|-------------------------|
| July 12, 1912 | \$10,000.00 | July 13, 1912 | 5% |
| Apr. 17, 1913 | 102,369.53 | Apr. 18, 1913 | 6% |
| Mar. 31, 1914 | 124,847.62 | Sep. 30, 1914 | 6% |
| Apr. 30, 1914 | 30,063.33 | Oct. 30, 1914 | 6% |
| July 31, 1914 | 15,035.00 | Jan. 31, 1915 | 6% |
| Sep. 30, 1914 | 20,050.83 | Oct. 1, 1915 | 6% |
| Oct. 31, 1914 | 10,030.00 | Nov. 1, 1915 | 6% |
| TOTAL | \$312,396.31 | | |

All of these notes are payable either to J.D. Spreckels & Brothers Company, or to J.D. and A.B. Spreckels Securities Company. The applicant has no bonds outstanding, and its other indebtedness as of June 30, 1915, consists of

Audited Accounts and Wages Payable, \$45,533.83
Unmatured Interest Accrued, 6.94 \$45,540.77

O R D E R.

SAN DIEGO AND SOUTH EASTERN RAILWAY COMPANY having applied to this Commission for authority to issue a promissory note as hereinbefore set forth, and a public hearing having been held and it appearing to this Commission that applicant's request is reasonable and should be granted, and that the purposes for which it is proposed to issue said note are not reasonably chargeable to operating expenses or to income;

IT IS HEREBY ORDERED that San Diego and South Eastern Railway Company, be and it is hereby authorized to issue for a period of two years from July 6, 1915, a promissory note in the sum of \$25,000, payable to First National Bank of San Diego. The order herein made is granted upon the following conditions, and not otherwise:

- (1).- The note herein authorized shall be issued only for the purpose of taking up a similar note issued without authority from this Commission.
- (2).- Applicant shall not pay more than 6% interest per annum on the note herein authorized.
- (3).- Applicant may issue the note herein authorized for periods of four months, and thereafter from time to time renew the note periodically without further authority from this Commission, provided that the terms for which the note is originally issued, plus the term of the renewals shall not exceed two years.
- (4).- Within 30 days after the issuance or renewal of the note herein authorized, applicant shall make report of such issue or renewal to this Commission.

(5) The authority herein granted is conditioned upon the payment of the fee prescribed under the Public Utilities Act.

(6) The authority herein granted shall apply only to such notes as shall have been issued on or before April 1, 1917.

Dated at San Francisco, California, this 22nd day of October, 1915.

Max Thelen
H. S. Lovelace
Alfred Gordon

Fee \$25.00
NOV 10 1915
H. Mackerson
Assistant Secretary

Commissioners.