

BEFORE THE RAILROAD COMMISSION OF THE
STATE OF CALIFORNIA.

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ORIGINAL

In the matter of the Application of)
FRESNO INTERURBAN RAILWAY COMPANY,)
a corporation, for authority to issue)
stocks and bonds.)

Application No. 1416.

C.C. Whittmore and J.B. Rogers for applicant.

LOVELAND, Commissioner.

FIRST SUPPLEMENTAL OPINION.

This Commission by Decision No. 1957, dated November 23, 1914, (Vol. 5, Opinions and Orders of the Railroad Commission of California, page 749), authorized applicant herein, subject to the conditions specified in said decision, to issue \$212,500 par value of common stock at not less than \$80.00 per share; \$350,000 face value of first mortgage twenty-five year 6 per cent. bonds at not less than 80 per cent of the face value, and \$350,000 par value of 6 per cent. cumulative preferred stock at par, the proceeds obtained from the sale of said preferred stock to be used to retire said \$350,000 face value of bonds.

Applicant was authorized to issue its stocks and bonds to secure funds to construct a line of railway from Fresno to "Centerville Citrus District", with a branch to "Clovis" and another branch to what is known as the "Gould Colony", embracing a total mileage of twenty-six miles. Applicant estimates that it can construct its railway on a basis of \$17,300.00 per mile, or for a total of \$449,800.00.

Applicant desires to use the \$350,000 par value of preferred stock to retire a like amount of bonds. The preferred stock it proposed to sell only to land owners along the line of its proposed railway.

In brief, the agreement between applicant herein and the subscribers for preferred stock provides that ten per cent. of the subscription price is to be paid within thirty days after the railway has been completed to or opposite the property of the subscriber for preferred stock. The remaining ninety per cent. of the subscription price is to be paid ~~in ten equal installments~~ ~~on~~ on or before ten years after the aforesaid payment of ten per cent., with interest at the rate of 6 per cent. per annum, from the date of said 10 per cent. payment. The unpaid portions of the subscription price are secured by a lien on the real estate of the subscribers. All the payments, under the agreement, shall be made to Mercantile Trust Company of San Francisco, trustee. The money thus paid to the trustee shall be used to pay the principal and interest on the \$350,000 face value of bonds which the company proposes to issue. The preferred stock is not to be issued until fully paid. Each purchaser of preferred stock shall have issued to him a receipt for each \$100.00 paid by such purchaser on the purchase price of the stock for which he has subscribed. The receipt shall recite the fact of such payment and shall provide that the amount represented by said receipt will be preferred as to dividends to the amount of 6% per annum from the earnings of the company, after payment of operating expenses, sinking fund installments and interest on bonds.

The subscribers for preferred stock agree to make all payments, together with interest thereon, within 90 days after due. Upon failure to do so, the entire balance unpaid shall become due and payable. To recover the same, the agreement authorizes the company to bring an action in the Superior Court of Fresno County to collect any unpaid subscription and enforce

the lien upon the property of the subscriber. The agreement for the sale of preferred stock further provides that it shall not be in force and effect, or binding on the company or the subscribers, until the subscription for the entire amount of \$350,000 of said preferred stock have been obtained. Within 90 days after subscriptions have been secured for said \$350,000 of preferred stock, the company agrees to begin the construction of the railroad and have the same completed within one year.

The authority granted by said Decision No. 1957 applied only to such stocks and bonds as applicant might issue prior to November 15, 1915. Applicant now reports that it has issued none of its common stock or bonds. It has obtained some subscriptions for preferred stock. These subscriptions were secured under representation that no stockholder's liability would attach to the purchase^{ers} of preferred stock. Since securing the subscriptions, applicant has been informed that under the laws of this State, the purchasers of preferred stock may be subject to a stockholder's liability. Because of this liability, applicant proposes to modify its financial plan as hereinafter indicated.

While^{now} applicant requests that it be permitted to issue its common stock and bonds heretofore authorized at any time on or before May 15, 1916, it does not desire to issue its preferred stock. It now asks authority to execute a new agreement providing for the issue of preferred certificates of indebtedness. The certificates shall provide that any surplus remaining^{from the operation of the road} after the payment of operating expenses, sinking fund installments, interest on bonds and other fixed charges, shall be used as follows:

First:- For the payment of 6% interest on all moneys paid by the land owners who sign the proposed^{new} agreement.

Second:- For the payment of an amount to the land owners who sign the proposed new agreement, equal to the interest due the company from said land owners on unpaid subscriptions.

Third:- For the payment and cancellation of bonds.

Fourth:- For the payment and cancellation of the certificates of indebtedness.

In my judgment the phrase "certificates of indebtedness" describes more accurately the nature of the commercial paper which applicant desires to issue. I, therefore, suggest that applicant do not use the term "preferred" in connection with the certificates of indebtedness herein authorized. Moreover, I am of the opinion that applicant may use its surplus earnings, if any, as above indicated, without an order from this Commission.

Applicant has not submitted a copy of the proposed agreement which the land owners, who wish to aid in financing the railway enterprise, are to sign. It reports that the terms and conditions of said proposed agreement will be similar to the terms and conditions of the agreement under which it has solicited subscriptions for preferred stock. This suggests the consideration of another matter. The financial plan heretofore approved, provided for the issue of common and preferred stock and bonds. The money obtained from the purchasers of preferred stock was to have been used to pay ^{off} bonded indebtedness. The stockholders of a company are the owners of the property of the corporation. They have a proprietary interest. While they are subject to a stockholder's liability, any assets remaining after the payment of the indebtedness belongs to them. In this instance, the proprietary interest of the preferred stockholders was limited to the par value of the stock and the dividends ^{thereon.} Under the plan now proposed, the land owners, who contribute toward the financing of the road, are to be given certificates of indebtedness bearing 6% interest. The certificates are to be issued for an indefinite term. Both the principal and interest are to be paid out of surplus earnings. Thus, in brief, the land owner, instead of having a proprietary interest in the railway, is to become an unsecured creditor of the company. The company, however, is to have a lien on the property of the land owner, who becomes a party to the new agreement, said lien to be for the unpaid subscriptions. -4- Of course, if the land owners, who

expect to be benefited by the construction of the proposed line of railway, desire to aid in its financing, this Commission will not restrict them from so doing. I do not desire to cast unnecessary doubt upon this promotion enterprise. But as a matter of fact, this Commission has no information at hand from which it can ascertain whether or not the surplus earnings of Fresno Interurban Railway will be sufficient to pay the principal of and the interest on the certificates of indebtedness which applicant now proposes to issue. In order that the attitude of this Commission may not be misinterpreted, applicant will be required to furnish a copy of this decision to each land owner before he is called upon to sign any agreement relating to the issue of certificates of indebtedness.

Because of the essential difference between a certificate of preferred stock and a certificate of indebtedness, it will be necessary for applicant to submit to this Commission for approval a copy of the proposed agreement which it expects the land owners to sign. Applicant shall also submit a copy of the proposed certificate of indebtedness which it desires to issue. I am of the opinion that the certificate of indebtedness should be in such form as to render it negotiable. I suggest further that they be issued for a term not exceeding fifteen years, and that they be made a lien on the property of the company, subject to the lien of the first mortgage bonds.

I herewith submit the following form of order.

O R D E R.

FRESNO INTERURBAN RAILWAY COMPANY having requested this Commission to amend the order found in Decision No. 1957 (Vol. 5, Opinions and Orders of the Railroad Commission of California, page 749).

And good cause appearing, the Railroad Commission hereby amends said order found in Decision No. 1957 so as to read as follows:

IT IS HEREBY FURTHER ORDERED that Fresno Interurban Railway Company be given authority, and it is hereby given authority, to issue 2,125 shares of the par value of \$100.00 per share of common capital stock, or a total par value of \$212,500.00 in lieu of a like amount of stock authorized by Decision No. 1957, dated November 23, 1914.

IT IS HEREBY FURTHER ORDERED that Fresno Interurban Railway Company be given authority, and it is hereby given authority to issue \$350,000.00 of its first mortgage six per cent twenty-five year bonds in lieu of a like amount of bonds authorized by Decision No. 1957, dated November 23, 1914.

IT IS HEREBY FURTHER ORDERED that Fresno Interurban Railway Company be given authority, and it is hereby given authority to issue certificates of indebtedness bearing six per cent. interest per annum, in the aggregate sum of \$350,000.00.

The authority herein granted is granted upon the following conditions, and not otherwise:

- (1).- The common stock herein authorized to be issued shall be sold so as to net applicant not less than \$80.00 per share.
- (2).- The bonds herein authorized to be issued shall be sold so as to net applicant not less than 90% of the face value thereof plus accrued interest.
- (3).- The certificates of indebtedness herein authorized to be issued shall be sold so as to net applicant not less than the face value thereof.
- (4).- The common stock and bonds herein authorized to be issued shall be used for the purpose of refunding share for share and bond for bond 580 shares of common stock and \$110,000.00 of bonds heretofore authorized by this Commission in Application No. 1084, to be issued by this applicant. The proceeds from the balance of said common stock and said bonds shall be used only as shall hereafter be directed by this Commission.
- (5).- \$350,000.00 face value of certificates of indebtedness herein authorized shall be used only for the purpose of

refunding the \$350,000.00 face value of applicant's bonds herein authorized, in such manner as shall be hereafter approved by this Commission.

- (6).- The authority herein granted is conditioned upon the submission by the applicant to this Commission and the approval thereof by this Commission of -
- (a).- Applicant's mortgage and deed of trust securing its bonds.
- (b).- The form of contract for the sale of certificates of indebtedness herein authorized. Said contract to provide that the moneys obtained through the sale of the certificates of indebtedness will be used to pay applicant's bonded indebtedness.
- (c).- The form of receipt to be issued by applicant for partial payments for its certificates of indebtedness.
- (7).- None of the stock and none of the bonds herein authorized to be issued shall be issued until this Commission shall have issued a supplemental order finding that the applicant herein has complied with all the conditions enumerated in this order.
- (8).- The authority herein granted shall apply only to such bonds and to such stock as shall have been issued on or before May 15, 1916.
- (9).- A copy of this decision shall be furnished to each and every land owner before he is called upon to sign any agreement relating to the issue of certificates of indebtedness herein authorized.
- (10).- The authority herein given is conditioned upon the payment of the fee prescribed under the Public Utilities Act.

The foregoing First Supplemental Opinion and Order

