

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application  
of United Railroads of San Fran-  
cisco for an order authorizing  
the issue by United Railroads of  
San Francisco of coupons on the  
first mortgage 6% bonds of Ferries  
and Cliff House Railway Company,  
due March 1, 1914.

ORIGINAL

Application No. 2033.

Decision No. 30364

.....

William Abbott for United Railroads of San Francisco.

THE COMMISSIONER, Commissioner.

O P I N I O N.

The petition herein alleges, in effect, that on March 1, 1889, Ferries and Cliff House Railway Company executed a deed of trust or mortgage to secure the payment of \$650,000.00, face value, of its first mortgage bonds maturing March 1, 1914, and bearing interest at the rate of 6 per cent per annum; that a copy of said deed of trust or mortgage is attached to the petition and marked "Exhibit A"; that on October 13, 1893, Ferries and Cliff House Railway Company consolidated and amalgamated into Market Street Railway Company and that on March 18, 1902, Market Street Railway Company assigned all its properties to United Railroads of San Francisco, which company is now the owner and in possession thereof; that on January 21, 1914, United Railroads of San Francisco arranged for the postponement of the presentation of the bonds of Ferries and Cliff House Railway Company for payment and for the waiver of the right of the bondholders, until December 31, 1914, to foreclose the mortgage securing said bonds; that as part of this arrangement United Railroads of San Francisco paid and retired 50 of said bonds, leaving 600 bonds remaining unpaid; that on or before December 31, 1914, United Railroads of San Francisco paid and cancelled 200

additional of said bonds, thus leaving 400 bonds outstanding; that on December 13, 1914, United Railroads of San Francisco entered into an arrangement with E. H. Rollins & Sons for the further postponement and presentation of said 400 bonds for payment and for a waiver until December 31, 1916, of the right of the bondholders to foreclose the mortgage securing said bonds; that a copy of the agreement with E. H. Rollins & Sons is attached to the petition and marked "Exhibit C"; that as a part of the consideration of said agreement, United Railroads of San Francisco agreed to supply E. H. Rollins & Sons on or before December 31, 1914, with 4 coupons for interest upon each of said 400 bonds of Ferries and Cliff House Railway Company remaining unpaid, promising in apt words to pay interest on each of said 400 bonds at the rate of 6 per cent per annum, payable semi-annually on June 30th and December 31st of 1915 and 1916; that in pursuance of said agreement, United Railroads of San Francisco supplied said interest coupons and attached the same to each of said 400 bonds of Ferries and Cliff House Railway Company; and that at the time of entering into the arrangement with E. H. Rollins & Sons, United Railroads of San Francisco was advised and believed that the consent of the Railroad Commission to the issue of the coupons herein referred to for interest was not necessary and that in accordance with said advice and belief, this Commission's consent was not asked for. Petitioner asks for an order ratifying and confirming the issue by United Railroads of San Francisco of said interest coupons.

A public hearing on this application was held in San Francisco on January 7, 1916. At the hearing, petitioner asked for and was granted leave to amend the prayer of its petition so as to ask that an order be issued authorizing it to issue new interest coupons, payable June 30, 1916, and December 31, 1916, in lieu of the coupons heretofore issued purporting to be payable on said dates.

The evidence shows that in December, 1914, or January, 1915, United Railroads of San Francisco issued the interest coupons which are referred to in the petition, payable respectively on June 30, 1915, December 31, 1915, June 30, 1916, and December 31, 1916; that the coupons due on June 30, 1915, and December 31, 1915, have been paid out of earnings and cancelled; and that the coupons due June 30, 1916, and December 31, 1916, are still outstanding.

The evidence further shows that these interest coupons were issued by United Railroads of San Francisco without having secured the consent of the Railroad Commission, on the advice of counsel for E. H. Rollins & Sons to the effect that this Commission's consent was not necessary.

Section 52 of the Public Utilities Act provides in part that "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 purposes specified in the section, but only after 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 to be 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."

As the interest coupons which United Railroads of San Francisco attached<sup>to</sup> the bonds of Ferries and Cliff House

Railway Company are clearly promises to pay interest, they constitute "notes" and also "evidences of indebtedness," as those words are used in Section 52 of the Public Utilities Act. Hence, in so far as such interest coupons were payable at periods of more than twelve months after the date of their <sup>issue,</sup> this Commission's authority for the issue thereof should have been secured.

I am satisfied from the evidence that United Railroads of San Francisco acted in good faith and with no intention of violating the Public Utilities Act, and recommend that this Commission authorize the issue by United Railroads of San Francisco of new interest coupons to be issued in lieu of those which are now outstanding and void.

A suggestion was made at the hearing that United Railroads of San Francisco could accomplish its purpose by adopting a resolution ratifying and confirming the issue of these coupons.

I am of the opinion that an act which is absolutely prohibited by statute and which affects the public policy of the State, can not be ratified. Such act is absolutely void and not merely voidable. While it will not be necessary for United Railroads of San Francisco to call in the outstanding bonds, I am of the opinion that it will be necessary to substitute new coupons for those which are now outstanding. There must be an execution and delivery of the new coupons. In view of the possibility that it may be difficult to find some of the outstanding bonds, I suggest that United Railroads of San Francisco be given until July 31, 1916, within which to call in the existing coupons and issue the coupons herein authorized.

I submit the following form of order:

O R D E R.

UNITED RAILROADS OF SAN FRANCISCO having filed a petition asking for an order of the Railroad Commission authorizing the issue of interest coupons, as hereinafter specified, and a public hearing having been held upon said application and it appearing that said interest coupons will be paid at maturity from the earnings of United Railroads of San Francisco, and that this application should be granted,

IT IS HEREBY ORDERED that United Railroads of San Francisco be and the same is hereby authorized to issue its interest coupons bearing interest at the rate of 6 per cent per annum, and payable respectively on June 30, 1916, and December 31, 1916, to be attached to the 400 bonds of Ferries and Cliff House Railway Company now outstanding, one interest coupon payable June 30, 1916, and one interest coupon payable December 31, 1916, to be attached to each bond, on the following conditions and not otherwise, to-wit:

1. United Railroads of San Francisco shall call in the interest coupons payable June 30, 1916, and December 31, 1916, now attached to said bonds of Ferries and Cliff House Railway Company and shall substitute for the same the interest coupons herein authorized to be issued.

2. United Railroads of San Francisco, on or before the 25th day of each month, shall make a verified report to the Railroad Commission, in accordance with General Order No. 24, in so far as applicable, stating the issue of interest coupons during the preceding month and the numbers of the bonds to which said coupons have been attached.

3. The authority hereby granted shall not become effective until United Railroads of San Francisco has paid the fee specified in Section 57 of the Public Utilities Act.

4. The authority herein given shall apply only to such interest coupons as shall have been issued on or before July 31, 1916.

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 11th day of January, 1916.

Max Thelen  
H. D. Overland  
W. E. Gordon

Commissioners.

