

Decision No. ✓

ORIGINAL

Decision No. 3173

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of
TIDEWATER SOUTHERN RAILWAY COMPANY } Application No. 2041.
for authority to issue certain promis- }
sory notes and to pledge certain bonds. }

Byron A. Bearce for applicant.

BY THE COMMISSION.

O P I N I O N.

This is an application by Tidewater Southern Railway Company for an order authorizing the renewal of certain promissory notes now outstanding, as hereinafter set forth, amounting in all to \$85,750.00, and for authority to issue additional promissory notes not to exceed a total face value of \$14,250.00, making a total note issue of \$100,000.00, and for authority to pledge \$2.00 par value of applicant's bonds as security for each \$1.00 face value of notes so issued or renewed.

A public hearing was held in Stockton on January 27, 1916. From the evidence it appears that in June, 1913, applicant needed about \$120,000.00 for the completion, including electrification, of that portion of its railway line lying between Stockton and Modesto. Owing to the financial stringency then existing, applicant was unable to raise more than a small portion of this money by the sale of its stock or bonds and was forced to borrow \$100,000.00 to complete the work. As applicant borrowed this

amount upon promissory notes payable within one year of the respective dates of issue, it did not have to obtain the authorization of this Commission to issue the same, but it did obtain authority from this Commission by Decision No. 738, dated June 21, 1913 (reported in Volume 2, Opinions and Orders of the Railroad Commission of the State of California, p. 1057) to issue \$200,000.00 par value of its bonds, such bonds to be used as collateral security for promissory notes of a total face value of not more than \$100,000.00; it being further provided that not more than \$2.00 par value of applicant's bonds should be used as security for each \$1.00 borrowed upon said notes. By the terms of said decision, it was further provided that the bonds should not be issued later than December 31, 1913.

On June 18, 1914, by Decision No. 1594 (reported in Volume 4, Opinions and Orders of the Railroad Commission of the State of California, p. 1272) this Commission authorized Tidewater Southern Railway Company to issue its promissory notes in the aggregate amount of \$100,000.00, to take up outstanding notes secured by the \$200,000.00 face value of bonds pledged as authorized under Decision No. 738, and to issue as collateral security therefor bonds not to exceed the face value of \$2.00 as security for each \$1.00 borrowed, said bonds to be numbered 196 to 395, inclusive, and to be issued on or before June 30, 1915.

At the present time applicant operates an electric railway between Stockton and Modesto, a distance of 33.24 miles, although it might be noted that its articles of incorporation provide that the company may build, and operate by steam, electricity or other lawful motive power, a standard gauge railroad between the following points:

"Commencing at Stockton and running generally in a southeasterly direction through Modesto, Turlock and Fresno, an estimated main line length of 147 miles, and various branches aggregating 80 miles in length."

In addition to that portion of its line already in operation, the company has practically completed the grading of its road-bed from Modesto to Turlock, a distance of approximately 16 miles. From Turlock 4.49 miles of track have been laid toward Modesto and 8 miles of its right of way from Turlock southerly to the Merced River have been graded and applicant has all of the timber necessary for constructing its bridge across the Tuolumne River and expects to complete the line from Modesto to Turlock whenever the danger from the competition of automobile busses has been checked.

Applicant's entrance into Stockton is made over the Central California Traction Company's tracks from Pilgrim Street and Weber Avenue. Applicant operates over these tracks upon an agreed rental basis, which, according to applicant's testimony, constitutes a disproportionate percentage of its operating expenses. The line from Stockton to Modesto traverses a portion of the San Joaquin Valley noted for its rich and productive soil.

Applicant's line is paralleled on the east by the Santa Fe and on the west by the Southern Pacific, which are on an average about three miles distant; it crosses the South San Joaquin Irrigation District and the Modesto Irrigation District, and the proposed line from Modesto to Turlock will run through the Turlock Irrigation District. This portion of the line, when completed, will tap the most productive district upon applicant's route so far as freight is concerned.

Applicant's articles of incorporation provide for a total stock issue of \$5,000,000.00 divided into 5,000,000 shares of the par value of \$1.00 each, of which 250,000 shares are preferred stock. Of this amount, applicant, on June 30, 1915, had outstanding \$889,187.00 par value of common stock and \$42,920.00 par value of preferred stock, in addition to which Stock Certificate No. 1 for \$2,000,000.00 par value of common stock was issued to Byron A. Bearce and is endorsed:

"Issued for voting purposes only, not to be transferred and is to be returned to the treasury on or before July 1, 1919, as provided in agreement dated July 1, 1912, between Byron A. Bearce and Tidewater Southern Railway Company".

On August 7, 1915, applicant levied an assessment of 10¢ per share upon its capital stock, which assessment by its original terms was to have become delinquent on October 4, 1915. Owing to extensions granted by applicant the final sale for the delinquent assessments was not held until November 30th, 1915, at which time the company bought back and returned to its treasury 231,545 shares which had been subscribed but which had never been paid for. Mr. Byron A. Bearce, the company's president and general manager bought in all the shares of outstanding stock which had actually been issued by the company, and upon which the assessments had become delinquent, amounting to between 75,000 and 80,000 shares. He has allowed the original stockholders to buy back this stock at cost to him including interest figured at 7% per annum, with the result that all of such stock has been repurchased by its original owners with the exception of about 20,000 shares. By this assessment the company raised about \$95,000.00, which was used in paying off portions of its floating indebtedness, including the \$14,250.00 which was paid upon the \$100,000.00

of notes above mentioned.

Mr. Bearce testified that, in his opinion, applicant would probably have to levy, sooner or later, one more assessment of 10¢ per share.

The preferred stock of Tidewater Southern Railway Company entitles its holders to receive, out of the company's surplus profits, dividends at the rate of 6% per annum and no more. The dividends are non-cumulative, but the preferred stock holders have a preference as to the company's assets as well as to dividends.

Tidewater Southern Railway Company has provided for a bond issue of \$4,000,000.00, of which this Commission has authorized the issue of \$750,000.00 par value. Under said authorization, bonds of the par value of \$378,500.00 have been sold, which netted applicant a total of \$307,883.20; and additional bonds of the par value of \$200,000.00 have been pledged in pursuance of the authority of this Commission as above set forth.

Applicant's entire bond issue is secured by a deed of trust executed to Union Trust Company of San Francisco. The lien of the deed of trust covers all the property of the company at the date of its execution and all property thereafter acquired, with the exceptions hereinafter noted.

The bonds are dated April 15, 1912, and mature April 15, 1942. Bonds numbered 1 to 2000, inclusive, are of the denomination of \$1,000.00 and bonds numbered 2001 to 6000 are of the denomination of \$500.00. Bonds bear 5% interest per annum, payable semi-annually. Under the terms of the deed of trust, the trustee may deliver bonds in the following amounts and for the following purposes:

- A. \$500,000.00 face value may be delivered to the company for the purpose of paying in part for the construction of a line of railway from Stockton, San Joaquin County, to Modesto, Stanislaus County.
- B. \$400,000.00 face value of bonds may be delivered to the company after the completion of the line of railway from Stockton to Modesto, for the purpose of constructing a line of railway from Modesto to Turlock, Stanislaus County.
- C. \$650,000.00 face value of bonds may be delivered to the company after the construction of the line of railway from Modesto to Turlock, for the purpose of constructing a line of railway from Turlock to Merced, Merced County.
- D. \$700,000.00 face value of bonds may be delivered to the company after the construction of the line of railway from Turlock to Modesto for the purpose of constructing a line of railway from Merced to Madera, Madera County.
- E. \$600,000.00 face value of bonds may be delivered to the company after the construction of the line of railway from Merced to Madera for the purpose of constructing a line of railway from Madera to Fresno, Fresno County.

The remaining \$1,150,000.00 face value of bonds may be issued at the rate of not more than \$20,000.00 per mile to pay for the cost of constructing various branches and spurs.

The trustee is prohibited from delivering any bonds to the company or its order unless the company has first obtained an order authorizing the issue of the bonds from the Railroad Commission.

Under the terms of the deed of trust, the trustee may declare the principal of the bonds due in the event that the company fails to pay bond interest within 6 months after the same becomes due, or fails to comply with any of the covenants within 6 months after written notice from the trustee. The holders of a majority of the face value of the outstanding

bonds may waive default. The trustee is under no obligation to take notice of any default unless notified in writing by the holders of 10% of the face value of bonds outstanding, nor does the trustee need to take any action involving any expense unless requested in writing by the holders of not less than a majority of the face value of the bonds secured and outstanding and tendered a reasonable indemnity.

The deed of trust requires the company to pay to the trustee for sinking fund purposes the following amounts:

On October 15, 1916, and annually thereafter to October 15, 1921, an amount equivalent to 2% of the face value of the bonds outstanding.

On October 15, 1922, and annually thereafter to October 15, 1941, an amount equivalent to 3% of the face value of the bonds outstanding.

The moneys paid into the sinking fund may be used to pay interest arrears or to retire bonds at not more than 103, or may be invested in securities which are lawful investments under the laws of California for savings banks.

The bonds redeemed by the company through its sinking fund are to be kept alive and the interest accretions added to the sinking fund.

The Company may redeem any of its bonds upon any interest payment date at not more than 103.

The deed of trust permits the company to sell real property not necessary for right-of-way or station grounds free of any lien. Provision is also made whereby the property subject to the mortgage or deed of trust may be released. In (such event, the proceeds obtained from the sale of property must be expended to acquire new property.

In reference to the value of applicant's property, we need merely refer to Case No. 584 which was brought on the Commission's own initiative for the purpose of ascertaining and reporting the various elements entering into the value of applicant's property and which was determined by Decision No. 3138 of this Commission on March 3, 1916.

Applicant has reported operating revenues and expenses to this Commission for the last three fiscal years ending June 30th, as follows:

<u>ITEM</u>	<u>1 9 1 5.</u>	<u>1 9 1 4.</u>	<u>1 9 1 3</u>
Operating Revenues	\$85,818.07	\$65,905.89	\$27,052.44
Operating Expense	<u>73,141.02</u>	<u>58,326.45</u>	<u>19,745.32</u>
Net Revenue	12,677.05	7,579.44	7,307.12
Non-Operating Income	<u>57.82</u>	<u>--</u>	<u>--</u>
Operating Income	12,734.87	7,579.44	7,307.12
Deductions from Income			
Miscellaneous Rents	--	--	--
Taxes	3,191.68	1,002.26	752.43
Interest on Funded Debt	16,502.19	12,323.99	6,128.30
Int. on Unfunded Debt	5.47	--	--
Amortization of Debt			
Discount	<u>2,814.31</u>	<u>--</u>	<u>--</u>
Total Deductions	22,513.65	13,326.25	6,880.73
Net Income or Loss	9,778.78*	5,746.81*	426.39

*Loss

Mr. Bearce further testified that he had made a careful estimate of the amount of revenue which applicant had lost through the competition of the so-called "jitney busses" operating between Stockton and Modesto.

Applicant is operating between Stockton and Modesto 8 trains or cars per day each way, maintaining a two-hour schedule, while the Southern Pacific trains have been running upon a four-hour schedule and consume from 15 to 35 minutes more in making the trip than do applicant's trains. Applicant claims that as a result of its superior service it was, prior to the advent of the automobile busses, carrying between 90% and 95% of all the passenger traffic between these two points and ^{that} it is still carrying this percentage of all passengers travelling by rail. Its passenger revenue from through business, however, formerly amounted to about 80% of its total passenger revenue while now it amounts to only 50% of the total, and according to Mr. Bearce's computations, from a count of the number of passengers carried by the automobiles, his company lost between \$35,000.00 and \$45,000.00 of revenue from this competition during the year 1915. While this estimate may be somewhat excessive when we consider the fact that at one time during the summer as many as twenty-four automobile busses were operating between these two cities, carrying passengers at less than regular railroad fare of 80¢, and at times reducing the fare as low as 50¢, it seems probable that if the company had not been subjected to this competition last year it would have received enough revenue to have covered all of its maintenance and operating expenses, taxes, bond interest and interest upon its floating indebtedness and still have shown a surplus at the end of the year instead of a considerable deficit.

Mr. Bearce further testified that all of the "jitney bus" operators were losing money and that, on an average, the individual operator continued in business for not more than three months; that not one of the original operators was still in business, but that new ones were continually entering the field upon the expectation that they could make money where the others had failed and that, so far as he could foresee, this competition would continue indefinitely unless checked by legislation. The County has passed an ordinance imposing numerous regulations and restrictions upon these automobile busses and imposing a tax upon their gross receipts equal to the tax imposed by the State upon applicant's gross receipts, which ordinance will probably be submitted to a vote of the people by referendum.

During 1914 approximately 54.6^{per cent} of applicant's operating revenue was obtained from passenger traffic, while during 1915 the passenger traffic was 62% of the total.

Applicant now has outstanding the following promissory notes secured by bonds as above set forth:

Date	Payee	Secured by Bonds	Face Value Bonds	Face Value Note	Date Matur- ity	Rate Int- erest
Aug. 2/14	San Joaquin Valley Bk.	201-250	\$50,000	\$25,000	Aug. 2/15	7%
Aug. 7/13	Calaveras County Bank	251-260	10,000	5,000	Aug. 7/14	7%
Aug. 5/14	Stockton Investment Co.	261-270	10,000	5,000	Aug. 5/15	7%
Sept. 23/14	1st Nat'l. Bk.--Stockton	271-280	10,000	5,000	Mar. 23/15	7%
Sept. 24/14	1st Nat'l. Bk.--Stockton	281-290	10,000	5,000	Mar. 23/15	7%
Aug. 31/14	Stockton Savings & Loan Soc.	291-340	50,000	25,000	Aug. 31/15	7%
Dec. 30/14	Victor N. Walsh	341-346	6,000	3,000	Dec. 30/15	7%
Aug. 8/13	Union Safe Deposit	361-367	7,000	1,750	Bal. Aug. 8/14	7%
Dec. 24/14	Farmers Merchants Bk.	368-377	10,000	5,000	Dec. 24/15	7%
Jan. 5/15	Eatin & Bickley	378-384	7,000	3,500	Jan. 5/16	7%
Jan. 9/15	Grace Vanderburg	390-395	6,000	2,500	Bal. Jan. 9/16	7%
Total			\$176,000	\$85,750		

From the foregoing table it will be noted that some of the notes are secured by bonds in excess of \$2.00 face value for each \$1.00 of notes, which condition has resulted from the fact that part payments have been made upon certain of the notes upon which some of the collateral has been returned. We feel that this condition should not be permitted to arise in the future, and, accordingly, we shall provide in our Order that when partial payment shall be made upon any of the notes herein authorized, the collateral shall be returned at the ratio of \$2.00 par value of bonds for each \$1.00 of part payment.

It will be seen from the above table that of the original \$100,000.00 of notes authorized as above set forth, only \$5,750.00 face value of notes are now outstanding. At the time it appeared that applicant issued the entire \$100,000.00 notes but had subsequently paid off \$14,250.00 of this in-

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**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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	Total		\$176,000	\$85,750		

From the foregoing table it will be noted that some of the notes are secured by bonds in excess of \$2.00 face value for each \$1.00 of notes, which condition has resulted from the fact that part payments have been made upon certain of the notes upon which some of the collateral has been returned. We feel that this condition should not be permitted to arise in the future, and, accordingly, we shall provide in our Order that when partial payment shall be made upon any of the notes herein authorized, the collateral shall be returned at the ratio of \$2.00 par value of bonds for each \$1.00 of part payment.

It will be seen from the above table that of the original \$100,000.00 of notes authorized as above set forth, only \$85,750.00 face value of notes are now outstanding. At the hearing it appeared that applicant issued the entire \$100,000.00 of notes but had subsequently paid off \$14,250.00 of this in-

debtedness. Under this application, however, the company wishes permission to issue a total of \$100,000.00 of notes, devoting \$85,750.00 to renewing its present notes and the remaining \$14,250.00 to construction work. We feel that applicant should be authorized to issue notes to the amount of \$85,750.00 for the purposes of renewing or refunding the notes above set forth, and we further feel that applicant should be authorized to issue additional promissory notes of a total face value not exceeding \$14,250.00 and to pledge its bonds as collateral therefor for the acquisition of operative property and for the construction, extension and improvement of its facilities, upon the condition that before issuing any portion of said \$14,250.00 face value of notes it shall notify this Commission in detail the purposes to which it wishes to devote the proceeds of said notes, and shall obtain from this Commission a supplemental order approving the expenditures.

O R D E R.

TIDEWATER SOUTHERN RAILWAY COMPANY having applied to this Commission for an order authorizing the issue of \$85,750.00 face value of promissory notes for the purpose of renewing or refunding the notes hereinafter set forth in this Order, and for authority to issue additional promissory notes not to exceed a total face value of \$14,250.00, and for authority to pledge certain bonds as security therefor; and a public hearing having been held on said application, and the Railroad Commission finding that the purposes for which said notes or the proceeds thereof are to be used are not in whole or in part reasonably

chargeable to operating expenses or to income and that the application should be granted, subject to the conditions hereinafter specified,

IT IS HEREBY ORDERED that Tidewater Southern Railway Company be and the same is hereby authorized to issue its promissory notes bearing interest at not to exceed 7% per annum in the total sum of \$85,750.00, for the purpose of renewing or refunding the following notes:

Date	Payee	Secured by Bonds	Full Bonds	Face Note	Date Matur- ity	Rate In- terest
Aug. 2/14	San Joaquin Valley Bk.	201-250	\$50,000	\$25,000	Aug. 2/15	7%
Aug. 7/13	Calaveras County Bank	251-260	10,000	5,000	Aug. 7/14	7%
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Jan. 9/15	Grace Vanderburg	390-395	6,000	2,500	Bal. Jan. 9/16	7%
Total			\$176,000	\$85,750		

And it is hereby further ordered that Tidewater Southern Railway Company be and the same is hereby authorized to issue additional promissory notes not exceeding the total face value of \$14,250.00, bearing interest at the rate of 7% per annum;

And it is hereby further ordered that said Tidewater Southern Railway Company be and the same is hereby authorized to issue and pledge as collateral security therefor its bonds numbered 196 to 395, inclusive, not to exceed \$2.00 face value of bonds as security for each \$1.00 face value of notes so

issued.

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

1. Tidewater Southern Railway Company shall issue said notes so as to net not less than the face value thereof.

2. Upon payment of any portion of the principal of any note or notes herein authorized, the payee or payees shall return to applicant \$2.00 face value of the bonds pledged as collateral for each \$1.00 so paid upon the principal of such note or notes.

3. Tidewater Southern Railway Company is hereby authorized during the period of one year from the date of this order to issue further notes in renewal of those herein authorized on the same terms, and to pledge as collateral security therefor said bonds of the face value of \$2.00 for each \$1.00 face value of notes so secured, provided, that the combined terms of the notes hereby authorized and those issued in renewal thereof, respectively, shall not exceed one year from December 31, 1916.

4. None of said \$14,250.00 face value of notes above mentioned in this order shall be issued until applicant shall have submitted to this Commission a detailed statement of the purposes to which the proceeds of said proposed notes shall be applied, and shall have obtained a supplemental order from this Commission approving the issue of said notes for said purposes.

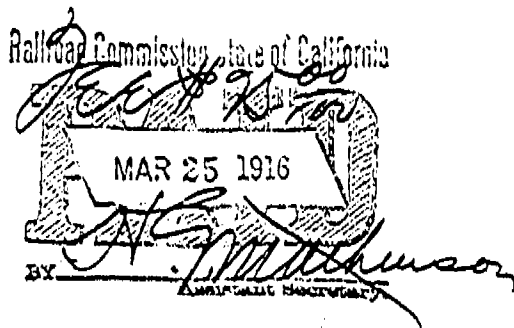
5. Tidewater Southern Railway Company shall keep a true and accurate record of the issue of the

notes herein authorized, and shall, on or before the twenty-fifth day of the month following the issue of the respective notes, make a verified report to this Commission, setting forth the notes herein authorized, the fact and the date of issue, the face value of the respective notes, the rate of interest, and the application of the proceeds, 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.

6. When the bonds herein authorized to be pledged are returned to applicant's treasury they shall not again be issued unless this Commission's consent shall first have been secured.

7. This order shall not become effective until Tidewater Southern Railway Company shall have paid the fee specified in Section 57, as amended, of the Public Utilities Act.

. Dated at San Francisco, California, this 22nd day of March, 1916.



Max Thelen
H. D. Loveland
W. H. Gordon
James R. DeLoach
Commissioners.