

Decision No. _____

ORIGINAL

Decision No. 3228

BEFORE THE RAILROAD COMMISSION OF THE
STATE OF CALIFORNIA.

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In the matter of the Application of)
NEVADA-CALIFORNIA-OREGON RAILWAY,)
a corporation, for an order ratify-)
ing and approving the issue of cer-)
tain bonds of said corporation here-)
tofore inadvertently issued without)
authority of this Commission.)

Application

No. 2055.

James B. Glynn for applicant.

DEVLIN, Commissioner.

OPINION.

This is an application of NEVADA-CALIFORNIA-OREGON RAILWAY for authority to issue \$519,000.00 face amount of its 5 per cent. 20-year bonds, dated May 1, 1899. Applicant desires to issue \$417,000.00 face amount of bonds in lieu of a like amount of bonds issued without the authority of this Commission. The remaining \$102,000.00 face amount of bonds, applicant desires to issue from time to time as may be necessary to reimburse its treasury for capital expenditures. Reference will hereafter be made to bonds issued without an order from this Commission.

Nevada-California-Oregon Railway was organized March 24, 1888 under the laws of the State of Nevada for the

purpose of acquiring the line of railway known as the Nevada-California Railroad. At the time of its organization, applicant acquired a line of railway extending from Reno, Nevada, to Red Rock, Lassen County, California, a distance of approximately 48 miles. Subsequently, applicant extended its line of railway to Lakeview, Oregon, 235 miles north of Reno. The line is of narrow gauge.

It appears that on May 1, 1899, the date of applicant's mortgage securing \$1,500,000 of bonds, it owned a line of railway extending from Reno, Nevada, northward to Amedee, California, a distance of approximately 79 miles. Applicant's line of railway from Amedee to Termo, 51 miles, was placed in operation July 1, 1900; from Termo to Madeline, 14 miles, on April 1, 1902; from Madeline to Alturas, 40 miles, during December 1909, and from Alturas to Lakeview, 54 miles, during January, 1912.

By Decision No. 2659, dated August 3, 1915, applicant was authorized to acquire the property of Sierra and Mohawk Railway Company, which owned a line of railway extending from Plumas Junction, Lassen County, California, westward through Plumas County to Olio, a distance of 36.73 miles.

Applicant's main line track located in California extends from Purdy, Sierra County, to Pine Creek, Modoc County, a distance of 196 miles. It crosses the extreme northeastern portion of Sierra County and passes through the eastern portion of Lassen and Modoc counties.

Applicant's line of railway after leaving Reno, Nevada, passes through a sparsely settled country.

According to the annual reports filed with this Commission, the freight traffic over Nevada-California-Oregon Railway during the past four years consisted of the

following commodities:

COMMODITIES	: 1912	: 1913	: 1914	: 1915	:
	: tons	: tons	: tons	: tons	:
Products of Agriculture	: 2,992	: 6,329	: 3,215	: 2,444	:
Products of Animals	: 13,862	: 18,288	: 25,652	: 23,790	:
Products of Mines	: 1,710	: 1,839	: 1,725	: 4,505	:
Products of Forests	: 9,822	: 8,181	: 3,726	: 5,271	:
Manufactures	: 9,789	: 3,910	: 3,883	: 4,103	:
Merchandise & Miscellaneous	: 5,730	: 8,507	: 8,494	: 10,383	:
T o t a l	: 43,905	: 47,054	: 46,703	: 50,496	:

The traffic reports show that the greatest revenue of the road comes from the shipment of cattle. During 1912, 31.5 per cent of the freight tonnage represented products of animals; during 1913, 38.8 per cent; during 1914, 55 per cent, and during 1915, 47 per cent.

The railway construction is light, the gradients are heavy and the general conditions of operation below the average. During the past 18 months, the management has expended large sums to pay for the cost of deferred maintenance and has put forth unusual efforts to rehabilitate the road-bed.

Nevada-California-Oregon Railway connects with the Western Pacific at Hackstaff for interchange of traffic. It also connects with the lines of the Southern Pacific at Reno. Within the last three years, however, the value of this connection has been lessened through the construction by the Southern Pacific Company of the Fernley-Lassen Railway. This railway runs from Fernley, Nevada, through Lassen County, California, tapping the rich section around Susanville, which had hitherto been tributary to the Nevada-California-Oregon Railway. At Reno, the railway also connects with the Virginia and Truckee Railroad running south from Reno.

Nevada-California-Oregon Railway has an authorized capital stock issue of \$2,200,000, divided into 14,500 shares of common and 7,500 shares of preferred stock. The par value of each share is \$100.00. The preferred stockholders are entitled to an annual dividend of 5 per cent. After the payment of the 5% dividend on the preferred stock, both common and preferred stockholders are entitled to share equally in the surplus earnings of the company. All of applicant's stock is outstanding. Of the 14,500 shares of common stock, 7,051 shares on June 30, 1915 were owned by the Estate of Charles Moran. This estate also owns 3,562 of the 7,500 shares of preferred stock. The evidence submitted in support of this application shows that the Estate of Charles Moran, Moran Brothers, or relatives, own practically all of the stock of Nevada-California-Oregon Railway. Since 1907, the company has paid dividends on its preferred stock as follows:

<u>YEAR</u>	<u>PER CENT</u>	<u>AMOUNT</u>
1907	4	\$30,000
1908	5	37,500
1909	5	37,500
1910	5	37,500
1911	3	22,500
1913	2	15,000

In addition to the foregoing, the company in 1909 paid a one per cent. dividend, amounting to \$14,500.00, on its common stock and paid a dividend of like amount on its common stock in 1910.

Nevada-California-Oregon Railway has an authorized bond issue of \$1,500,000. The payment of these bonds is secured by a mortgage or deed of trust covering all of the property of the company. The mortgage or deed of trust is executed to D. Comyn Moran and Amedee Moran, trustees. Subse-

quent to the execution of the mortgage, the Union Trust Company of New York was appointed trustee as successor to D. Comyn Moran and Amedee Moran. The bonds are dated May 1, 1899 and mature May 1, 1919. The bonds are of the denomination of \$1,000.00 each. The deed of trust authorizes the Board of Directors of the company to determine the rate of interest to be paid on the bonds. However, in no event shall the interest rate exceed 6 per cent. Should the company issue six per cent bonds, it is authorized to redeem them at 120 and accrued interest. If bonds are issued bearing less than 6 per cent. interest per annum, the company is permitted to redeem them at 110 and accrued interest. Beginning January 1, 1900, and annually thereafter, the company is obligated to pay the trustee for the purpose of creating a sinking fund an amount equal to 1 per cent. of the face amount of bonds outstanding. In the event of the non-payment of interest or principal when due, the holders of not less than 10% of the face amount of bonds outstanding have the power to compel the trustee to initiate foreclosure proceedings. Default in any other respect may be waived by the trustee unless otherwise directed by the holders of a majority of the bonds outstanding. No holder of bonds is entitled to bring any action under the deed of trust unless and until the trustee, on the request in writing of the holders of a majority of the bonds outstanding shall have refused to discharge its duties.

Applicant reports that prior to March 23, 1912, the effective date of the Public Utilities Act, it issued bonds in the amount of \$981,000. Subsequent to March 23, 1912, applicant issued \$417,000 face amount of bonds without an order from this Commission. Of the bonds issued subsequent to March 23, 1912, \$199,000 face amount of bonds were sold at 97½ and accrued interest; \$19,000 face amount of bonds at 99 and accrued interest and \$199,000 face amount at 90 and accrued interest. Through its sinking fund, applicant has retired bonds in the amount of \$128,000. Applicant at this time has bonds in the amount of \$1,270,000 outstanding. The evidence indicates that all of these bonds were issued to and are held by the Estate of Charles Moran or relatives of said Charles Moran.

On June 30, 1915, applicant reported to this Commission assets and liabilities as follows:

ASSETS:Investments:

Road and Equipments,	\$4,207,934.31
Sinking Funds,	70.29
Miscellaneous Physical Property,	18,143.55

Other Investments:

Notes,	18,088.88
Total Investments,	\$4,244,237.03

Current Assets:

Cash,	22,531.04
Traffic and Car Service Balances Receivable,	4,125.55
Net Balance Receivable from agents and conductors,	9,947.49
Miscellaneous Accounts Receivable,	10,675.10
Materials and Supplies,	31,053.95
Interest and Dividends Receivable,	73.32
Other Current Assets,	933.86
Total Current Assets,	\$ 79,340.31

Unadjusted Debits:

Rents and Insurance Premiums paid in advance,	908.26
Other Unadjusted Debits,	4,653.72
Total Unadjusted Debits,	5,561.98

TOTAL ASSETS, \$4,329,139.32

LIABILITIES:Stock:

Capital Stock,	\$2,200,000.00
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Long-Term Debt:

Funded Debt Unmatured,	1,235,000.00
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Current Liabilities:

Traffic & Car Service Balances Payable,	20,321.68
Audited Accounts and Wages Payable,	36,469.14
Miscellaneous Accounts Payable,	9,696.42
Interest Matured Unpaid,	325.00
Unmatured Interest Accrued,	10,291.67
Total Current Liabilities,	77,103.91

Deferred Liabilities:

Other Deferred Liabilities,	246.14
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Unadjusted Credits:

Tax Liability,	4,286.74
Accrued Depreciation - Road,	114,887.42
Accrued Depreciation - Equipment,	95,564.56
Accrued Depreciation - Miscellaneous Physical Property,	723.72
Other Unadjusted Credits,	119.33
Total Unadjusted Credits,	215,581.77

Corporate Surplus:

Additions to property through income and surplus,	407,537.50
Funded Debt retired thru income and surplus,	85,260.00
Sinking Fund and Miscellaneous Fund Reserves,	16,514.24
Total Surplus,	509,311.74
Profit and Loss - Credit - Balance,	91,895.76
Total Corporate Surplus,	601,207.50

TOTAL LIABILITIES, \$4,329,139.32

For the fiscal years ending June 30, 1912, 1913, 1914 and for the months ending January 31, 1916, applicant has reported to this Commission as follows:

I T E M	1912	1913	1914	1915
Rail Operations -Revenues	\$386,590.05	\$403,979.10	\$386,590.05	\$386,590.05
Rail Operations -Expenses	261,745.14	293,632.40	261,745.14	261,745.14
Net Revenue-Rail Operations	124,844.91	120,346.70	124,844.91	124,844.91
Auxiliary Operations-Revenues	2,221.55	5,670.55	2,221.55	2,221.55
Auxiliary Operations-Expenses	1,081.84	6,029.95	1,081.84	1,081.84
Net Revenue-Auxiliary Operations	1,139.71	359.40	1,139.71	1,139.71
Net Railway Operating Revenue	125,984.62	120,987.30	125,984.62	125,984.62
Railway Tax Accruals	18,841.30	18,841.32	18,841.30	18,841.30
Railway Operating Income	107,143.32	101,145.98	107,143.32	107,143.32
Other Income:				
Hire of Equipment	2,236.37	500.49	2,236.37	2,236.37
Miscellaneous Rents	1,634.11	2,175.50	1,634.11	1,634.11
Dividends	--	330.00	--	--
Interest	506.52	436.44	506.52	506.52
Miscellaneous	--	--	--	--
Total Other Income	4,377.00	3,442.43	4,377.00	4,377.00
Gross Income	111,520.32	104,588.41	111,520.32	111,520.32
Deductions from Gross Income:				
Interest on Funded Debt	41,813.90	48,047.23	41,813.90	41,813.90
Other Interest	4,190.57	5,964.70	4,190.57	4,190.57
Rent	102.48	214.00	102.48	102.48
Amortization of Funded Debt Discount	246.02	278.90	246.02	246.02
Miscellaneous	--	--	--	--
Total Deductions	46,352.97	54,504.83	46,352.97	46,352.97
Net Income	65,167.35	50,083.58	65,167.35	65,167.35
Disposition of Net Income:				
Sinking Fund Payments	9,710.00	14,030.00	9,710.00	9,710.00
Balance carried to Profit and Loss Account	55,457.35	36,053.58	55,457.35	55,457.35

(1).-- Loss

It will be noted that applicant's operating revenues decrease from \$403,979.10 for the year ending June 30, 1913 to \$377,748.51 for the year ending June 30, 1915. This decrease in the operating revenues is due in part to a voluntary reduction in the passenger rates from the 7 cents basis to a 5½ cents basis per mile; to the competition which came through the construction by the Southern Pacific of the Fernley-Lassen branch into Susanville; to acute automobile competition; to the lull in the development of the country and to the temporary falling off in the resort business at points along the line. While there has been a decrease in the operating revenues amounting to \$26,230.59 from 1913 to 1915, the operating expenses for the same period show an increase of \$83,926.12.

The increase in the operating expenses is primarily due to the failure on the part of those who had in charge the management of this property during years past to properly maintain it. During the past two years, the present management has expended large sums, relatively speaking, to meet the deferred maintenance. The expenditures for maintenance of way and structures in 1915 show an increase of \$50,219.55 as compared with 1914. The ratio of operating expenses to operating revenues are reported as follows:

Year ending June 30th, 1912,	67.71
Year ending June 30th, 1913,	70.21
Year ending June 30, 1914,	81.19
Year ending June 30th, 1915,	97.30
Seven months ending January 31, 1916, . .	84.73

In its application as originally filed, Nevada-California-Oregon Railway alleged that since March 23, 1912, up to and including January 1, 1916, for the purpose of acquiring, constructing, completing and extending its line of railway northward from Amedee, and for the purpose of the improvement and maintenance of its service in making additions and betterments thereto, it sold the following bonds:

NUMBER OF BONDS	FACE AMOUNT	DATE of SALE	PRICE
1107 to 1131 inclusive	\$25,000	9/30/12	97 $\frac{1}{2}$ and Accrued Interest
890 to 935 inclusive	46,000	10/23/12	97 $\frac{1}{2}$ and Accrued Interest
1132 to 1135 inclusive	4,000	10/ 4/12	99 and Accrued Interest
936	1,000	12/ 2/12	99 and Accrued Interest
937 to 950 inclusive	14,000	1/ 8/13	99 and Accrued Interest
975 to 1002 inclusive	28,000	2/11/13	97 $\frac{1}{2}$ and Accrued Interest
951 to 964 inclusive)			
1103 to 1024 inclusive)	100,000	5/ 1/14	97 $\frac{1}{2}$ and Accrued Interest
1136 to 1199 inclusive)			
1200 to 1300 inclusive	101,000	4/19/15	90 and Accrued Interest
1301 to 1320 inclusive	20,000	4/20/15	90 and Accrued Interest
1321 to 1335 inclusive	15,000	4/22/15	90 and Accrued Interest
1336 to 1345 inclusive	10,000	4/23/15	90 and Accrued Interest
1346 to 1347 inclusive	2,000	4/24/15	90 and Accrued Interest
1348 to 1351 inclusive	4,000	4/30/15	90 and Accrued Interest
1352 to 1353 inclusive	2,000	5/ 1/15	90 and Accrued Interest
1354 to 1361 inclusive	8,000	5/ 6/15	90 and Accrued Interest
1362 to 1363 inclusive	2,000	5/17/15	90 and Accrued Interest
1364 to 1383 inclusive	<u>20,000</u>	9/23/15	90 and Accrued Interest

Total, . . . \$402,000

Applicant further alleged that the \$402,000 face amount of bonds were inadvertently issued without an order from or the approval of this Commission and without any intention to violate the provisions of the Public Utilities Act. Upon being advised that the aforementioned bonds were issued in violation of the Public Utilities Act and, therefore, void, counsel for applicant at once proceeded to prepare the application now before the Commission. This application was filed with the Commission on January 21, 1916. On that date, applicant had in its treasury \$117,000 face amount of bonds. At the hearing upon this matter, it was disclosed that of these bonds, \$15,000 were sold on February 25 or 26, 1916.

While I have no reason to doubt the allegation that \$402,000 face amount of bonds were issued without an intention of violating the Public Utilities Act, I feel that no adequate showing has been made as to the \$15,000 face amount of bonds. These bonds were issued subsequent to the filing of the application herein, and after applicant's attention had been called to the provisions of the Public Utilities Act. While an attempt was made to justify the issue of the \$15,000 face amount of bonds on the ground of an emergency, yet the evidence submitted in support of this contention is not

convincing. Mr. McCartney, secretary and auditor for applicant, testified that the proceeds from the sale of the \$15,000 of bonds are held in the company's treasury as a reimbursement to meet the bond interest due in May. If such is the case, I fail to see the existence of an emergency which necessitated the issue of \$15,000 face amount of bonds contrary to the provisions of the Public Utilities Act and while the application for authority to issue said bonds was pending before this Commission. I am of the opinion that applicant's showing in regard to the issue of the \$15,000 of bonds has been entirely inadequate, and, therefore, recommend that the authority to issue bonds in lieu of said \$15,000 be held in abeyance until such time as applicant shall have furnished to this Commission satisfactory information showing that the bonds have been issued with no intention of violating the provisions of the Public Utilities Act or escaping the jurisdiction of this Commission. This, of course, has no bearing on the remaining \$102,000 face amount of bonds, but inasmuch as no evidence has been submitted showing the immediate need of the issue of these bonds, I am of the opinion that no inconvenience will be caused to applicant if the authority to issue said \$102,000 face amount of bonds be withheld until such time as applicant shall have furnished this Commission with satisfactory information relating to the issue of the aforesaid \$15,000 face amount of bonds.

I, therefore, recommend that this application be granted subject to the conditions found in the following order.

O R D E R.

NEVADA-CALIFORNIA-OREGON RAILWAY having applied to this Commission for an order authorizing it to issue \$519,000 face amount of first mortgage 5 per cent 20-year bonds due and payable May 1, 1919,

And a public hearing having been held and the Commission finding that the purposes for which applicant desires to use the proceeds are not reasonably chargeable to operating expenses or to income, and the Commission being of the opinion that applicant's request, subject to the conditions hereinafter specified, should be granted,

IT IS HEREBY ORDERED that of the \$519,000 herein petitioned for, NEVADA-CALIFORNIA-OREGON RAILWAY be given authority, and it is hereby given authority, to issue \$402,000 face amount of first mortgage 5 per cent. 20-year bonds due and payable May 1, 1919.

The authority to issue said bonds is given upon the following conditions and not otherwise:

- 1.- Bonds in the sum of \$402,000.00 may be issued in lieu of a like amount of bonds heretofore issued without the authority of this Commission, provided said bonds are issued at the same price as the bonds originally issued without an order from this Commission; the \$402,000.00 heretofore issued to be returned to the treasury of the company and report of such return made to the Commission.
- 2.- No part of the remaining \$117,000 face amount of bonds shall be issued until this Commission has issued a supplemental order finding that applicant has furnished this Commission with satisfactory evidence showing that \$15,000 face amount of bonds mentioned in the foregoing opinion have been issued through inadvertence and without intention of violating the Public Utilities Act.
- 3.- The \$117,000 face amount of bonds shall be issued so as to net applicant such price as may be fixed by this Commission in a supplemental order.
- 4.- Nevada-California-Oregon Railway shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of

said bonds during the preceding month, the terms and conditions of the sale, the moncoys 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.

5.- The authority herein granted is conditioned upon the payment by applicant of the fee prescribed in the Public Utilities Act, as amended.

6.- The authority herein granted shall apply only to such bonds as may be issued on or before December 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 4th day of April, 1916.

Received from San Francisco \$402.00
JEE # 519.00
APR 13 1916
H. Mathewson
Assistant Secretary

Max Thelen
H. Shovland
W. Gordon
Frank R. Decker
Commissioners.