

Decision No. 225

ORIGINAL

Decision No. 225

In the Matter of the Application of the SAN DIEGO, RIVERSIDE AND LOS ANGELES RAILWAY COMPANY for an Order authorizing the issue of Bonds of the face value of Three Million Dollars.

Application No. 163.

Leroy A. Wright for applicant.

THELON, Commissioner.

OPINION.

This is an application by SAN DIEGO, RIVERSIDE AND LOS ANGELES RAILWAY COMPANY for an order authorizing the issue of its bonds of the face value of Three Million Dollars for the purpose of constructing a line of railway between San Diego and Escondido, in San Diego County, California.

Applicant filed its articles of incorporation in the office of the County Clerk of San Diego County on March 7, 1912, and a certified copy thereof in the office of the Secretary of State on March 12, 1912. Applicant's route, as described in its articles of incorporation, runs from the City of San Diego to the City of Escondido, thence to the City of Riverside and thence to the City of Los Angeles, with branch lines from La Mesa Springs easterly one mile, from the west line of El Cajon Valley to Lakeside, from Poway Valley to Ramona, from the crossing of the San Jacinto River easterly seven and one-half miles, and from Chollas Valley to Lemon Grove, all of said branch lines being in San Diego County. The estimated length of the main line of applicant's railroad is one hundred and eighty (180) miles and of the branch lines thirty-five (35) miles, making a total estimated mileage of two hundred and fifteen (215) miles.

The hearing on this application was held in the City of San Diego on August 31, 1912. At that time applicant announced

that Oscar Lawlor and James E. Dognan of Los Angeles, who had theretofore performed all of applicant's legal work, had withdrawn and Leroy A. Wright for the first time appeared for applicant. The applicant was informed at the hearing that certain documentary information would have to be supplied before the Commission could render its decision on the application. Although the Commission has written numerous letters and has personally urged Mr. Franklin Helm, the promoter of the enterprise, to furnish this alleged information, the Commission has been unable to secure the most important of the information so required, including particularly the alleged contract between applicant and the Universal Construction and Investment Company, hereinafter at times referred to as the Construction Company, and the letters, cablegrams or other documentary evidence showing the terms of the alleged contract for the sale of its bonds, which applicant's witnesses testified had been entered into with certain London bankers. The Commission is forced to the conclusion that this information does not exist and will proceed on that assumption to the decision on this application.

The project of constructing a railroad between San Diego and Escondido via El Cajon has been under consideration since about September, 1909, during which month the San Diego, El Cajon and Escondido Railway Company was incorporated under the laws of this state by citizens of San Diego, El Cajon and Escondido. The organizer of this corporation was Mr. G. W. Purcell. Purcell later secured certain franchises and rights-of-way, to which reference will hereafter be made, and thereafter conveyed them by deed dated April 23, 1910, to Interurban Investment Company, which corporation in turn conveyed the same property to San Diego, El Cajon and Escondido Railway Company by deed dated June 15, 1911. The San Diego, El Cajon and Escondido Railway Company thereafter, by deed dated February 23, 1912, conveyed the same property to

Marion P. Waite, one of the directors of the Universal Construction and Investment Company. Thereafter, Mr. Waite conveyed the same property to the Universal Construction and Investment Company, which Company, by deed dated March 15, 1912, and apparently acknowledged on April 5, 1912, conveyed the property to the present applicant, the San Diego, Riverside and Los Angeles Railway Company.

At this point I desire to refer to agreement dated March 15, 1912, between San Diego, Riverside and Los Angeles Railway Company and San Diego, El Cajon and Escondido Railway Company. This agreement recites most of the transfers hereinbefore specified and then contains the following provisions:

1. "The Railway Company covenants that it has entered into a valid contract for the construction of its line from San Diego to Los Angeles with the Universal Construction and Investment Company."

2. "It hereby assumes all the obligations of said San Diego, El Cajon and Escondido Railway Company with respect to the conditions in its franchises so conveyed and particularly its obligations upon the \$15,000 bond now held by the City of San Diego, heretofore executed and filed by said Company as required by the terms of the Company's franchise within said city."

"The San Diego, El Cajon and Escondido Railway Company acknowledges that it has received a certificate for 1000 shares of capital stock of the Railway Company and joins in this agreement for the purpose of evidencing that the agreement heretofore entered into by and with said M. P. Waite has in all respects been complied with."

The copy of this agreement which has been filed with the Commission was executed by the San Diego, Riverside and Los Angeles Railway Company but not by the San Diego, El Cajon and Escondido Railway Company. There is on file with the Commission a similar agreement between the Universal Construction and Investment Company and G. W. Pursell, dated April 5, 1912, reciting that Pursell is the holder of all the outstanding shares of the capital stock of San Diego, El Cajon and Escondido Railway Company and of the Interurban Investment Company, that Pursell is authorized and empowered to deliver all of said shares to M. P. Waite and that Waite

has assigned his interest therein to the Universal Construction and Investment Company. The agreement then contains the following provisions:

1. "The Company covenants that it has entered into a contract with the San Diego, Riverside and Los Angeles Railway Company for the construction of the line of railway of said Company from San Diego to Los Angeles and that it is to receive for that part of said line from San Diego to Escondido three million dollars in the first mortgage 5 per cent sinking fund gold bonds of said Company."

2. "The Company covenants to pay to said G. W. Pursell for the benefit of the owners of said stock from the proceeds of the bonds which it is to receive for the construction of said line and which are not needed for that purpose, the sum of \$45,000 in cash, such payment to be made in any event on or before six months from the date hereof."

3. "It further covenants at the time of said payment of \$45,000, as aforesaid, to deliver to said G. W. Pursell 900 shares of the capital stock of said San Diego, Riverside and Los Angeles Railway Company, which stock shall be full paid, half common and half preferred."

4. "Said G. W. Pursell joins in this contract for the purpose of acknowledging that the same is in all respects in conformity with the agreement of the parties interested therein and heretofore made on the 8th day of February, 1912."

The copy filed with the Commission has been executed by the Universal Construction and Investment Company but not by Pursell. These two agreements seem to express the understanding of the parties at the time the San Diego, El Cajon and Escondido Railway Company conveyed to Waite the franchises and other property which had been acquired by Pursell. In each case there is a covenant to the effect that a contract has been entered into between San Diego, Riverside and Los Angeles Railway Company and the Universal Construction and Investment Company for the construction of the railway. No such contract, apparently, was ever entered into. Furthermore, payment has not been made to Pursell, as provided in contract dated April 5, 1912. I am of the opinion that San Diego, El Cajon and Escondido Railway Company may have a valid cause of action to have its conveyance of the property now claimed by applicant set aside for failure of consideration and recommend that this possible defect in the title to all of the railway company's property be removed before the railway company be permitted to issue

any bonds.

The property now claimed by applicant consists of three franchises, certain rights-of-way, and certain grading and track. I shall consider separately the present status of each of these items.

The franchises claimed by applicant are franchises or permits heretofore granted to G. W. Pursell by the City of San Diego, the Park Commissioners of the City of San Diego and the City of Escondido. The franchise from the City of San Diego was secured by Ordinance No. 3906, which was adopted by the common council on November 8, 1909, approved by the mayor on November 16, 1909, and effective on December 17, 1909. The franchise is for 25 years, for a street railway, to be operated by electricity, and provides that the construction of the railway must commence within six months and that it shall be completed, within one year from the commencement of construction, to El Cajon, and by June 1st, 1911, to Escondido. The provisions of the ordinance with reference to time of construction not having been complied with, the city council of San Diego on May 17, 1911, adopted Ordinance No. 4437, extending the time for the completion of the railway to El Cajon to June 1st, 1912, and the time for the completion to Escondido to June 1st, 1913. Again the applicant failed to comply with the conditions. The city council thereupon on June 1st, 1912, adopted Ordinance No. 4748, reciting that the road had not been completed in accordance with the provisions of Ordinance No. 4437, and providing that upon the filing with the city clerk of a good and sufficient bond, with sureties satisfactory to the city council, in the penal sum of \$15,000, conditioned that the road should be completed to La Mesa on or before November 1, 1912, and to Escondido on or before June 1, 1913, the time within which the road should be completed to La Mesa should be extended to November 1, 1912, "but otherwise there shall be no extension of time for the purpose of complying with the conditions of said franchise and this ordi-

nance shall have no effect whatever." Applicant thereafter filed with the city council a bond in the sum of \$15,000, with San Diego, Riverside and Los Angeles Railway Company as principal and the Universal Construction and Investment Company as surety. The city council thereafter found that the surety was not satisfactory and was not adequate security or security at all for the faithful performance of the conditions required by Ordinance No. 4748. The council thereupon, by Resolution No. 11307, directed that the bond be returned to the principal, which was done. The present status of this franchise is accordingly that, the applicant has not complied with its conditions and that it is subject to forfeiture by the City of San Diego. It should be noted also, that the franchise is for a street railway only. As applicant expects to derive the major portion of its revenue from freight traffic, it is evident that a street railway franchise alone will not answer its purpose and that a franchise permitting the transportation of freight through the streets of San Diego must be secured before applicant can have a reasonable prospect for success and before there will be reasonable security for the bonds.

The permit from the Board of Park Commissioners of the City of San Diego was secured by G. W. Pursell on August 24, 1909. A former permit had lapsed and this is the second permit. One of the conditions of the permit was that the railway should be completed and in operation over its entire route from San Diego to Escondido by June 1st, 1911, and the permit provided that unless this was done, the permission and authority thereby given should be considered revoked. The permit provided that a written notice from the Board of Park Commissioners of failure to carry out the conditions of the permit should be considered a sufficient revocation. Thereafter the time for the completion of the railroad was extended from June 1, 1911, to June 1, 1912. On June 1, 1912, a letter signed "Board of Park Commissioners by Julius Wangerheim, President," was sent to Mr. Pursell. This letter reads as follows:

"Kindly note that by the terms of your application and the extension granted by the Park Board for the 'Parsell Railroad' the franchise is revoked and annulled by limitation on June 1st, 1912, of which kindly take notice."

Applicant claims that this notification was not concurred in by the other members of the Board. Be that as it may, there is no doubt that on the facts, the Park Commissioners have the right to revoke the permit.

On September 21, 1909, the City of Escondido granted to G. W. Parsell by Ordinance No. 135, a franchise for 50 years for the construction and operation of a railway in the City of Escondido, to be operated by electricity or other motive power. This ordinance provided, among other things, that it was granted on the express condition that the work of constructing the railway should be commenced within four months and should be completed within three years after September 21, 1909. As this condition has not been complied with, the Board of Trustees of Escondido have the right to forfeit the franchise.

Before applicant issues any of the bonds hereby authorized it should be compelled to remove the possibilities of forfeiture of these three franchises and to secure from the City of San Diego and from the Park Commissioners, if necessary, a franchise which will permit it to haul freight through the city.

Applicant's right-of-way between the city limits of San Diego and Escondido is nearly all covered by contracts. In no case has a deed to the property been secured. While some of these contracts apparently do not have any time limit, quite a number of them do have such a limit, which in many cases has expired. The entire amount of money paid on these contracts is \$2100.00. For rights-of-way within the City of San Diego applicant's predecessors paid \$1062.60. Some additional property will have to be purchased within the city limits. Before the bonds are issued, applicant should satisfy the Commission as to its ability to clear the title to its rights-of-way.

Applicant has graded its right-of-way in the city park in San Diego and partially for some seven miles from the city limits of San Diego to La Mesa. Applicant has laid about 300 feet of track at the foot of E Street in San Diego on such portions of the streets as are not macadamized, and about 4100 feet of track in the city park, with several breaks where bridges are to be constructed.

The entire amount of money hitherto spent on the enterprise by Mr. Pursell, and his associates, and later by the present applicant, including the sum of \$21,500 which it was necessary to pay into the treasury before the articles of incorporation could issue, and including also bills payable in the amount of \$7500, consists of \$106,297.51. Of this amount, \$41,065.25 was spent by Mr. Pursell and his associates and the remaining amount by Mr. Helm and his associates in the present company. The amount claimed to have been spent by Mr. Helm and his associates includes \$5000 for attorney's fees, \$8300 for foreign engineers, \$2800 for cablegrams and \$7500 for traveling expenses and hotel bills. The amount of money spent by Mr. Helm and his associates which actually went into construction of the road, including engineering, amounts to \$11,132.26. The item of \$21,500 is recited in the minutes of the applicant as having been paid to M. P. Waite "for services in connection with the extension of the franchise of the company in the city of San Diego, and for all services to date, except for construction charges." Mr. Waite performed no services in connection with the extension of applicant's franchises in San Diego. If this check represents the money which was paid into the hands of applicant's treasurer prior to incorporation and if the money, after having served its purpose, was turned back to or for the man who originally supplied the funds, there is serious doubt as to whether the incorporation is valid. It certainly should not be possible to deposit with a proposed railway company a check so as to comply literally with the provisions of the law demanding that

a hundred dollars per mile should be paid into the treasury before incorporation, and then after incorporation, to draw the money out again. This transaction should be explained to the Commission's satisfaction before the bonds can be issued.

Applicant's total authorized capital stock consists of eight million dollars, divided into 80,000 shares of the par value of \$100 each. Of this amount, \$6,500,000, consisting of 65,000 shares, is common and \$1,500,000, consisting of 15,000 shares, is preferred. The holders of the preferred stock are entitled to receive, when and as declared by the board of directors, out of the surplus or net profits, but only out of cumulated profits and not out of the profits of any subsequent year or years, non-cumulative dividends at a rate not to exceed 5 per cent per annum. The preferred stock also has preference in the liquidation or dissolution of the corporation. Of the amount of capital stock so authorized, five shares have been issued to the directors of the corporation and the remaining shares, amounting to \$7,999,500.00 have been issued to and are now held by Universal Construction and Investment Company. Of the stock so issued, Certificate No. 13 for 1000 shares and Certificate No. 14 for 1145 shares, were issued to Universal Construction and Investment Company on April 5, 1912, without the prior consent of this Commission. These certificates are void because they were issued subsequent to the effective date of the Public Utilities Act-- March 25, 1912 --without the prior authorization of this Commission. All of the remaining stock was issued between March 12, 1912, and March 25, 1912, when the Public Utilities Act became effective. Applicant's attorneys should have known that the policy of the state as expressed by the Public Utilities Act, was against such procedure and that this act would become effective within less than 12 days after the first of the stock was issued.

The resolution of applicant's board of directors authorizing the issue of this stock to the Construction Company was adopted at a meeting of the board of directors held in the City of San Diego on March 15, 1912. At that time the Construction Company presented a letter offering to float three million dollars of applicant's bonds and to assign to applicant the rights, franchises and property theretofore owned by the San Diego, El Cajon and Escondido Railway Company, on condition that applicant would issue to it its shares of stock as hereinafter indicated and also to execute an agreement wherein applicant should assume the obligations of the San Diego, El Cajon and Escondido Railway Company, including the obligations on the \$15,000 bond held by the City of San Diego. The letter specifically provided that "in the event that the undersigned shall receive for said bonds a greater sum than seventy-five per cent of the face amount thereof, as heretofore set forth, such sum, if any, shall be and become the property of the undersigned, and it shall not be required to account therefore to you." This last provision is apparently contrary to Mr. Helm's testimony (see page 143 of the transcript) which was as follows:

"I have stated and want to go on record again as stating that the Universal Construction and Investment Company don't receive one cent of cash over and above the 75 cents that they receive for these bonds."

The board of directors thereupon adopted a resolution reciting that it was advisable to accept the offer of the Construction Company, calling upon the Construction Company to proceed with its arrangements for the placing and disposition of the bonds, "and that to aid it in so doing and to compensate it for its services as in said proposition provided and in payment for the property so to be transferred to this company, there be forthwith issued to said Universal Construction and Investment Company, or to its nominee, 79,995 shares of the capital stock of this company, 69,995 shares thereof for services and 10,000 shares for property purchased, which

stock when issued shall be regarded as being issued for services rendered and property purchased, and shall be stamped full paid and non-assessable." The resolution then proceeded to authorize the president and secretary to execute the agreement with respect to the assumption of the obligations of the San Diego, El Cajon and Escondido Railway Company, which agreement apparently never has been executed.

Referring now to the "services rendered" by the Construction Company in return for the 69,995 shares of applicant's capital stock, including 5000 shares of preferred stock, I find that the Construction Company's articles of incorporation were filed in the office of the Secretary of State of California on March 12, 1912. What services that company performed between March 12, 1912 and March 15, 1912, the day on which applicant's capital stock was issued to it, to entitle the Construction Company to capital stock of the value of \$6,999,500 does not appear. In my opinion, this stock was issued contrary to the provisions of the Constitution of this State and is entirely void. The remaining one million dollars in preferred stock was issued to the Construction Company in return for the property which had therefore been conveyed by San Diego, El Cajon and Escondido Railway Company and for which property Mr. Pursell, and his associates, had spent \$41,065.25. The sale of preferred stock is the device frequently adopted by a utility to secure the moneys which it cannot derive from the sale of its bonds. A transaction by which a utility divests itself of one million dollars of preferred stock in return for property which cost less than five per cent of that amount speaks for itself and needs no further comment. I recommend that a proper adjustment of applicant's stock transactions be made a condition precedent to the issue of the bonds hereby authorized.

This same Construction Company on March 12, 1912, presented to applicant's board of directors a letter offering to

build, equip and complete applicant's proposed line of railway from San Diego to Los Angeles for six million dollars, payment to be made for cost and ten per cent, the line between San Diego and Escondido to be completed by December 1, 1912. The board of directors of applicant thereupon adopted a resolution accepting the offer of the Construction Company and directing applicant's engineer to prepare specifications for the construction of the line of railway and to deliver the same to the president, whereupon the president and secretary were to be authorized to enter into a contract with the Construction Company for the construction and completion of the line of railway, according to the terms, conditions and intent of the offer. If it was intended to tie up the railway company in this way before the effective date of the Public Utilities Act, that intent was not carried out for the reason that the proposed contract was never entered into. No provision was made for the filing of a bond by the Construction Company to protect the Railway Company, nor was any guarantee given for the performance by the Construction Company of the contract into which it was to enter. The Construction Company was incorporated on the very day of the offer and there was nothing to show that it was competent or able to construct applicant's line of railway. At the same meeting the Construction Company presented a letter dated March 12, 1912, offering to float for applicant a bond issue of eight million dollars, whereupon the applicant's directors adopted a resolution by which the Construction Company was retained and employed to assist in floating the securities of this Company "to be hereafter authorized."

Applicant desires now to issue three million dollars of its bonds and to deliver them to the Construction Company under the alleged contract with that Company, the Construction Company to sell the bonds and to apply 75 cents on each dollar of bonds to the purposes of the construction. As has heretofore appeared, the Construction Company is to keep for itself all moneys

derived from the sale of these bonds in excess of 75 per cent of the face amount thereof.

No valid contracts have been executed between the Railway Company and the Construction Company. I recommend that this Commission refuse to recognize any transactions hitherto made between these two companies and that such bonds as may be issued by applicant be issued and sold by it directly and the proceeds thereof deposited in applicant's treasury, to be expended under the directions of this Commission.

Applicant asks for authority to issue bonds of the face value of three million dollars and submits the following estimates of moneys necessary to build its line of railway from San Diego to Escondido:

Cost line to Escondido	\$1,475,304
Cost Ramona Extension	464,696
Terminal properties in San Diego	245,000
Additional rights-of-way outside of San Diego	25,000
New route within San Diego	100,000
Three franchises	10,200
Rolling stock	158,800
Buildings	67,500
Shop and Shop Equipment	45,000
Pier and Wharves	114,500
Overhead Electric Construction	375,000
Interest on \$3,000,000 @ 5%	<u>225,000</u>
Total.....	\$3,306,000

Certain of the above items are obviously too high. Interest during construction should be for one year only at 6% per annum. The item for overhead electric construction is probably about 30 per cent too high. On the other hand, certain of the items, such as the cost of the line to Escondido and the cost of the Ra-

mona extencion, seem to be reasonable. Certain other items may be dispensed with, at least for the present. It is a settled policy of this Commission in case of a new enterprise not to permit the issue of bonds of a face value up to the entire value of the property.

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Bearing in mind this policy and the fact that applicant has at present certain property consisting partly of contracts for right-of-way and of the franchises hereinbefore referred to, and boearing in mind also what has hereinbefore been said as to certain items in applicant's list which are too high and others which may be unnecessary for the present, I am of the opinion that the Commission may safely authorize an issue of bonds of the face value of \$2,500,000, on the terms hereinafter specified, provided that applicant shall first have presented to the Commission a feasible plan for raising the money which will be necessary for the enterprise in excess of that which will be derived from the sale of the bonds.

Applicant asks authority to permit the Construction Company to sell its bonds at 75. In its petition, applicant alleges that "in pursuance of an agreement heretofore, and on the 15th day of March, 1912, entered into by and between your petitioner and the Universal Construction and Investment Company, a corporation of this state, said Universal Construction and Investment Company, for the consideration in said agreement mentioned, did, through its agents in the City of London, England, and in other foreign cities, arrange for the purchase of three million dollars in face value of said bonds of your petitioner, to be issued as aforesaid, at the price or sum of 75 per cent of such face value." At the hearing, Mr. Franklin Helm testified that the bonds were already underwritten and that the contract for their sale was signed some time in May or June of this year. In spite of the most insistent efforts of this Commission, we have been unable to secure the contracts and other documentary evidence in substantiation of this

statement, although repeated efforts have been made to secure the same from Mr. Helm. The Commission will accordingly have to disregard any such purported arrangements with the London bankers in the same way in which it must disregard arrangements made by applicant with the Construction Company. Mr. Helm also testified that the rate of interest on these bonds was to be 6 per cent, while the petition in this case, which was filed on July 26, 1912, at a date subsequent to that on which Mr. Helm stated that the contracts had been signed, alleged that the interest was to be 5 per cent. Attached to the petition was a form of trust deed which specified that the interest was to be 5 per cent. The resolution of applicant's board of directors, adopted at an adjourned meeting held March 15, 1912, at 5 o'clock P. M., in the City of San Diego, specified that the rate of interest was to be 5 per cent per annum. I am referring to this matter now not on the question as to what the rate of interest should be, but on the question of whether or not a contract actually was signed up with people in London or elsewhere. I am convinced that it will be necessary, under the circumstances of this case, to have the bonds bear interest at the rate of 6 per cent.

This Commission has not heretofore authorized the sale of any public utility bonds at less than 80, and I see no reason for departing from that policy in this case. If the bonds hereby authorized are sold at 80, applicant will net therefrom two million dollars. The additional amount necessary to build its railroad will have to be raised in some other manner, as heretofore indicated.

Attached to the application is a printed draft of a trust deed or mortgage, dated June 1, 1912, between the San Diego, Riverside and Los Angeles Railway Company and Citizens Trust and Savings Bank, to secure the proposed bond issue. This indenture contains many mistakes. It will be necessary that a form of trust deed satisfactory to this Commission be prepared before the

bonds herein authorized may issue and that the necessary changes be made in the resolution of the board of directors heretofore adopted authorizing the trust deed.

At the hearing, the Commission examined carefully the prospects of success attendant upon a line of railway between San Diego and Escondido. The Commission investigated the possibilities of the country and the kind and amount of traffic which such a railroad could reasonably be expected to transport, with a view to ascertaining whether or not there is a reasonable prospect that such railroad could pay interest on its outstanding obligations and lay aside moneys for a sinking fund, in addition to paying operating expenses. The proposed line of railway will pass through sections of country which are very fertile and which present good opportunities for development. San Diego and vicinity are experiencing a marked and substantial growth, which growth will probably be materially accentuated upon the completion of the Panama Canal. I am of the opinion that if such a railroad were honestly and economically constructed and operated, it would have a reasonable prospect of being able to pay interest on its obligations, in addition to operating expenses and sinking fund. Such a railroad would be a great blessing to the communities affected, and this Commission will certainly do all in its power to aid an enterprise which honestly and legitimately tries to fulfill this public need. I find that the moneys to be derived from the sale of the bonds authorized in this proceeding are not reasonably chargeable to operating expenses or to income and that such amount of bonds is reasonably necessary to carry out applicant's purposes, subject to the express conditions precedent hereinafter in the order specified.

The Commission will not be disposed hereafter to view with favor the petition of an applicant to issue securities, particularly in large amounts, unless it shall appear to the Commission that the applicant has manifested good faith in its formation and in the acquisition and retention of its franchise rights. Applicants should certainly be required to clear away all clouds upon their legal existence and to show a compliance with ordinary dictates of good faith be-

fore this Commission can well consider a request for an authorization to incur the responsibilities and obligations imposed by the issuance of stocks and bonds.

I submit herewith the following form of order:

O R D E R .

SAN DIEGO, RIVERSIDE AND LOS ANGELES RAILWAY COMPANY having filed with this Commission its application for an order of this Commission authorizing the issuance by said Company of bonds to the amount of three million dollars, face value, said bonds to be payable on the first day of June, 1952, and to bear interest at the rate of 5 per cent per annum, which interest was changed at the hearing to 6 per cent, payable semi-annually and secured by a trust deed or mortgage upon all the property of the Company, and a public hearing having been duly held upon said application, and the Commission finding that the money to be procured by the issue of the bonds hereby authorized, on the terms and conditions hereinafter specified, is reasonably required by said Company for the acquisition of property and the construction, completion, extension and improvement of facilities, as hereinafter more particularly specified, and that said purposes are not in whole or in part reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED that the Railroad Commission of the State of California hereby authorizes the issue by San Diego, Riverside and Los Angeles Railway Company of \$2,500,000, face value, of principal of bonds of said Company to bear interest at 6 per cent per annum, payable semi-annually, under and in pursuance of the terms of trust deed or mortgage hereafter to be approved by this Commission, subject to the following conditions precedent and not otherwise, to-wit:

1. SAN DIEGO, RIVERSIDE AND LOS ANGELES RAILWAY COMPANY shall sell the said bonds hereby authorized so as to net the said

Company not less than 80 per cent in cash of the par value of the principal thereof, besides interest accrued thereon.

2. The proceeds from the sale of said bonds shall be applied only to the construction and equipment of applicant's line of railway between San Diego and Escondido, the different general items and amount of proceeds to be spent therefor to be set forth in supplemental order hereafter to be issued, after the conditions precedent hereinafter specified have been complied with.

3. San Diego, Riverside and Los Angeles Railway Company shall keep 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 25th day of each month, the Company shall make verified reports to the Commission stating the sale or sales of said bonds during the previous month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which in so far as applicable, is made a part of this order.

4. Before applicant may issue any of said bonds it shall first have complied to the Commission's satisfaction with the following conditions precedent:

(a) Applicant shall have filed with this Commission evidence satisfactory to the Commission that San Diego, El Cajon and Escondido Railway Company, and G. W. Pursell will not proceed against applicant for breach, if any, of applicant's covenants in connection with the transfer of the property of San Diego, El Cajon and Escondido Railway Company to applicant.

(b) Applicant shall first have filed with this Commission evidence satisfactory to the Commission that the City of San Diego, the Board of Park Commissioners of San Diego and the City of Escondido will not insist on the causes of forfeiture of

the franchises or permits heretofore secured by G. W. Pursoll and that applicant has from said Cities and said Board valid franchises or permits under which it can proceed to the completion of its line of railway.

(c) Applicant shall first have filed with this Commission a certified copy of a franchise from the City of San Diego, and from the Board of Park Commissioners, if necessary, permitting applicant to transport freight over a feasible and reasonable route over the streets of said city to deep water in San Diego Bay.

(d) Applicant shall first have filed with this Commission evidence satisfactory to the Commission either that it has or can secure satisfactory title to its right-of-way.

(e) Applicant shall first have made adjustments satisfactory to the Commission with reference to the issue of its capital stock.

(f) Applicant shall first have filed with this Commission evidence satisfactory to the Commission with reference to securing the funds in addition to those to be derived from the sale of said bonds, necessary for the construction of its line of railway.

(g) Applicant shall first have filed with this Commission a certified copy of a trust deed or mortgage, in form and substance satisfactory to the Commission.

(h) Applicant shall first have secured from this Commission a supplemental order stating that each of the conditions precedent hereinbefore specified has been complied with in a manner satisfactory to the Commission, and prescribing in further detail the purposes for which the proceeds of said bonds are to be spent and the amount of said proceeds which is to be spent for said respective purposes.

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 9th day
of November, 1912.

John W. Eastman
A. D. Loveland
Edwin O. Edgerton
Max Sherwin

Commissioners.