Decision No. 326

ORIGINAL

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of SAN JOSE TERMINAL RAILWAY COMPANY for authority to issue bonds. } Application No. 57.

Ralph Eathorn for applicant.

THELEN, Commissioner.

SUPPLEMENTAL OPINION.

Applicant heretofore on August 7, 1912, filed with this Commission its application for authority to issue bonds of the face value of $650,000, for the purpose of constructing its proposed line of railway between San Jose and Alviso, near the southern end of San Francisco Bay, and of purchasing equipment for the operation of the railway for the purpose of passenger and freight traffic, and also to enable applicant to secure water connection between Alviso and San Francisco over San Francisco Bay. The Commission, on October 9, 1912, made its order on said application, granting authority to issue bonds of the face value of $400,000 on the conditions therein specified. Reference is hereby made to the Commission's opinion and order on said application. Applicant thereafter, on November 1, 1912, filed its amended and supplementary application and petition, asking authority to issue bonds of the face value of $200,000 and also to sell a portion of its preferred stock for the purposes specified in the amended and supplementary application. The matter came on for hearing on November 8, 1912, and is now ready for decision.

In the amended and supplementary application applicant states that it desires to raise $155,259.66 for the following purposes:

1. For the purpose of purchasing real property in San Jose and Alviso, dredging Alviso Slough, wharves and steamer landing and shop tools---------- $19,100.00

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2. For the purpose of constructing applicant's line of railway between San Jose and Alviso---------- $130,159.66

3. For the purpose of purchasing equipment, $ 6,000.00

The very substantial reductions in applicant's original estimates result from the fact that applicant does not now ask authority to issue bonds for the purpose of purchasing freight equipment. Applicant's present application is confined primarily to passenger business. The sum to be spent on equipment is for four second-hand motor cars to be used primarily on the passenger business between San Jose and Alviso. Applicant intends to enter into a contract with the proprietor of a vessel fit for passenger transportation and to make connection with its line of railway at Alviso. It is expected to make two round trips a day, and applicant expects to carry an average of 200 passengers per day, each way between San Jose and San Francisco, at a fare of $1.50 or $1.25 per round trip. One of applicant's witnesses, a man who has had many years of experience in navigation on San Francisco Bay, testified that in his opinion the number of passengers per day would soon materially exceed 200.

While applicant desires at present to raise only $155,259.66 it is evident to the Commission that this amount will not be sufficient for applicant's purposes, even though applicant's business be at first limited primarily to the passenger business. Provision is accordingly made in the order in this case for raising some additional money which is to be kept in applicant's treasury and to be expended later for purposes properly capitalizable after an order has been secured from this Commission specifying the purposes and amounts.

Applicant's present property consists of the right of way between San Jose and Alviso, with franchises from the City of San Jose and the City of Alviso and the County of Santa Clara. The right of way has been graded throughout almost its entire extent. Testimony was introduced at the hearing concerning the value of applicant's property. The testimony concerning applicant's fran-

chises is not relevant in this connection, for the reason that under the provisions of Section 52 of the Public Utilities Act this Commission has not power to authorize the capitalization of any franchise or permit in excess of the amount actually paid to the State or a political subdivision thereof, as the consideration for the grant of such franchise or permit. Applicant's witnesses testified that its right of way could not be repurchased for less than $100,000. This right of way consists of some 7 miles of land of an average width of 30 feet, being a total of about 28 acres. I am of the opinion that the value placed upon this property by applicant's witnesses is considerably in excess of its real value. Applicant's witnesses also testified that $30,000 in cash had been expended by applicant for rights of way, rent, salaries, office furniture, supplies and stationery, advertising matter, real estate in San Jose, engineering and other purposes. Of this amount some $8,000 represents moneys paid for rights of way. Mr. J. A. Mehling and Mr. M. J. Gardner have spent some time and money in connection with the enterprise and have received in return therefor practically all of applicant's common capital stock. While the evidence does not show the exact value of applicant's present property, I am of the opinion that this property, together with the sum hereinafter specified as necessary to be raised as a condition precedent to the issue of the bonds, will provide a reasonable margin for the bonds.

I am of the opinion that an issue of bonds of the face value of $200,000 to be sold so as to net applicant not less than par plus accrued interest is reasonably necessary for the purposes specified in the amended and supplementary application, on the conditions in the order specified, and I find that the purposes for which the proceeds of said bonds are to be spent are not in whole or in part reasonably chargeable to operating expenses or to income.

I find that before applicant issues any bonds it should have in its treasury from the sale of preferred stock, the sum

of $25,000 in cash. Applicant's preferred stock is 7% non-cumulative stock and should be sold so as to net applicant not less than par.

I submit herewith the following form of supplemental order:

SUPPLEMENTAL ORDER.

SAN JOSE TERMINAL RAILWAY COMPANY having applied to the Railroad Commission for authority to issue bonds to the amount of $200,000, face value, said bonds to be payable on the 16th day of March, 1932, unless sooner redeemed, and to bear interest at the rate of 5% per annum, payable semi-annually, on the 16th day of March and the 16th day of August of each year, and secured by a trust deed or mortgage upon all the property of the company, and also for authority to issue its preferred capital stock in such amount as may be necessary to raise the additional amounts of money necessary for the purpose of constructing its line of railway and not secured from the sale of applicant's bonds, and a public hearing having been duly held and it appearing to the Commission that the issue of said bonds and preferred stock is reasonably required by said company for the acquisition of property and the construction, completion, extension and improvement of applicant's facilities and for the discharge of its obligations, all as hereinafter specified and that the same are not 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 Jose Terminal Railway Company of Two Hundred Thousand Dollars ($200,000) face value, or so much thereof as may be necessary for the purposes hereinafter specified, of principal of bonds of said company, maturing on the 16th day of March, 1932, unless sooner redeemed, to bear interest at 5% per annum, payable semi-annually, under and in pursuance of the terms of the deed of trust or mortgage heretofore and on the 16th day of March, 1912, made and executed by said San Jose Terminal Railway Company to Garden City Bank and Trust Company, as trustee, and

also the issue by said company of $25,000 face value of its 7% non-cumulative preferred stock, upon the conditions following and not otherwise, to-wit:

1. San Jose Terminal Railway Company shall sell said bonds hereby authorized so as to net said company not less than 80% of the par value of the principal thereof besides interest accrued thereon and the preferred stock so as to net said company not less than par.

2. The proceeds from the sale of said bonds shall be applied to the following purposes only, that is to say:

(a) For the discharge of applicant's obligations to Mahoney Brothers for grading, ---------- $10,204.39

(b) For the acquisition of property and the construction, completion, extension and improvement of facilities, for the items specified in "Exhibit X" attached to applicant's amended supplementary petition, to which exhibit reference is hereby made for particulars, amounts not to exceed in the aggregate the following amounts for the following purposes, respectively:

(1) For the purchase of real property -- $19,100.00

(2) For the construction of applicant's line of railway----------$119,955.27

(3) For the purchase of motor cars--- 6,000.00

3. Before San Jose Terminal Railway Company may issue any of said bonds it shall first have filed with this Commission, under oath, a statement showing that it has received in its treasury from the sale of said preferred stock the sum of $25,000 in cash and shall have received a letter from this Commission stating that applicant may proceed with the issue of its bonds.

4. The moneys derived by applicant from the sale of its bonds and preferred stock, as herein authorized, in excess of the amounts necessary for the purposes and in the amounts specified in applicant's said Exhibit X, shall be kept by applicant in its treasury and shall not be expended unless applicant shall first have secured from this Commission an order authorizing the expenditure

and specifying the purposes and amounts thereof.

5. San Jose Terminal Railway Company shall keep true and accurate accounts showing the receipt and application in detail of the sale of the bonds and preferred stock hereby authorized to be issued and on or before the 25th day of every month the company shall make a verified report to the Commission stating the sale of such bonds and preferred stock during the preceding month, the terms and conditions of such 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.

6. The authority hereby given to issue bonds and preferred stock shall apply only to bonds issued by applicant on or before the 31st day of October, 1913.

7. The effectiveness of this order is conditioned upon the prior payment to this Commission of the fee specified in Section 57 of the Public Utilities Act.

8. This order shall supersede and take the place of the order heretofore made on October 9, 1912, in the proceeding entitled as above.

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 M. Eshleman

H. D. Loveland

Max Thelen

Commissioners.

Fee due $750.00

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