

MHC

ORIGINAL

Decision No. _____

Decision No. 3535

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of MARTINEZ AND CONCORD INTERURBAN
RAILWAY COMPANY for a certificate
of public convenience and necessity
and for an order authorizing an
issue of stocks and bonds.

Application No. 2125

BY THE COMMISSION.

SECOND SUPPLEMENTAL OPINION

On May 13, 1916, Decision Number 3330, this Commission authorized the applicant herein, Martinez and Concord Interurban Railway Company, to issue certain securities for the construction of a line of railroad in Contra Costa County upon the condition that applicant should first submit to this Commission for approval a copy of its trust deed securing an issue of first mortgage bonds and a copy of its indenture securing an issue of cumulative participating bonds.

Applicant has now submitted copies of said indentures and the same are ready for approval.

As security for an issue of \$200,000. face value of first mortgage six per cent 25 year gold bonds applicant proposes to execute a trust deed mortgaging all property now owned or hereafter acquired to Mercantile Trust Company of San Francisco. The bonds so issued are to be redeemable at par and accrued interest. Five hundred of said bonds are to be of the denomination of \$100. each and 150 of said bonds are to be of the denomination of \$1,000. each. A sinking fund is provided for, the railway company agreeing to set aside semi-annually out of net earnings, after commencement of regular operation, a sum which shall equal 5 per cent per annum of its outstanding bonded debt.

The railway company also agrees to pay to the trustee all of the proceeds from the sale of \$200,000. face value of 25 year six per cent cumulative participating bonds. Said proceeds are to be used for the purchase of first mortgage bonds which are to have interest coupons detached and are to be deposited with the trustee of the company's cumulative participating bonds as security for said cumulative participating bonds.

The trust deed as submitted to the Commission provides that in case of default in interest or in any other covenant continuing for 60 days, the trustee may and upon the request of the holders of a majority in amount of the outstanding bonds shall declare the principal of the bonds due and payable.

It is further provided (Article V. Section 2) that in case of default in interest continuing for 60 days, or in case of default in principal, or in case of default in any other covenant continuing for 60 days after written notice to the company, then the Trustee -

(a)-May, and upon the written request of the holders of a majority in amount of the outstanding

bonds shall, enter upon the property;

(b)-May cause the indenture to be foreclosed and the property sold;

(c)-May proceed to protect the rights of the bondholders by appropriate legal proceedings;

(d)-Shall be entitled to the appointment of a receiver.

W. Earl I am of the opinion that Article V. Section 2 should be amended to the end that the holders of a majority in amount of the outstanding bonds may require the Trustee to sell the property or to institute suit. This will be made a condition of the order herein.

As security for an issue of \$200,000. face value of 25 year 6 per cent cumulative participating bonds, applicant proposes to execute a trust indenture to Mercantile Trust Company of San Francisco. The bonds issued thereunder are to be redeemable at par and accrued interest and upon redemption are to be cancelled.

It is proposed to issue 500 bonds of the par value of \$100. each and 150 bonds of the par value of \$1,000. each, bonds to be issued as the trustee receives payment in full therefor or as an equal amount of first mortgage bonds are deposited as security.

It is provided that as the cumulative bonds are paid and cancelled, a like amount of first mortgage bonds deposited as security shall also be cancelled.

No bonds or coupons shall be deemed to be in default as long as the company complies with the sinking fund provisions of its first mortgage or until maturity of the bonds. In case of default in interest no foreclosure shall be had but interest shall be cumulative. Upon default at maturity the trustee may and upon request in writing by the holders of a majority in amount of the outstanding bonds shall

proceed to institute suit for the purpose of causing the mortgaged property to be sold for the benefit of the bondholders.

The railway company agrees that no lien will be created prior to the lien of the cumulative participating bonds, excepting only the lien of the first mortgage bonds and the lien of purchase money mortgages, unless the holders of cumulative participating bonds are included within the security of such lien and are given an opportunity to exchange their holdings for an equal amount in par value of the securities secured by such lien.

MLC After a consideration of the indentures submitted by applicant I am of the opinion that the same may be approved, subject, however, to the conditions of the following Order:

THIRD SUPPLEMENTAL ORDER

MARTINEZ AND CONCORD INTERURBAN RAILWAY COMPANY having filed with the Commission for its approval copies of two certain trust indentures as hereinbefore set forth;

And good cause appearing;

IT IS HEREBY ORDERED that Martinez and Concord Interurban Railway Company be and it is hereby authorized to execute a mortgage or deed of trust upon its properties as security for an issue of \$200,000 face value of first mortgage six per cent 25 year gold bonds substantially in the form of a trust indenture submitted by applicant on July 13, 1916, and marked Exhibit "N".

IT IS HEREBY FURTHER ORDERED that Martinez and Concord Interurban Railway Company be and it is hereby authorized to execute a trust indenture securing an issue of \$200,000. face value of 25 year six per cent cumulative participating bonds substantially in the form of a trust indenture submitted on July 13, 1916 and marked Exhibit "O".

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

1.-Before applicant shall finally execute the mortgage or deed of trust, hereinbefore referred to as Exhibit "M", it shall amend Article V, Section 2 of said deed of trust to the end that the holders of a majority in amount of the outstanding bonds shall have the right to require the trustee to foreclose the indenture and sell the property, or to protect and enforce the rights of the bondholders by appropriate legal or other equitable remedies.

2.-The approval herein given of said trust indentures is for the purpose of this proceeding only and is an approval in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said indentures as to such other legal requirements to which they may be subject.

3.-The authority herein granted shall apply only to such trust indentures as shall have been executed on or before September 30, 1916.

The foregoing Second Supplemental Opinion and Third Supplemental Order are hereby approved and ordered filed as the Second Supplemental Opinion and the Third Supplemental Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of July, 1916.

Man Helen
Adviser

Frank D. Dyer
Commissioners.