

ORIGINAL

Decision No. _____

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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In the matter of the supplemental
 application of DEATH VALLEY RAILROAD
 COMPANY for an order authorizing the
 issuance and sale of certain of its
 bonds.) Application No. 2555.

H. Eserich for applicant.

BY THE COMMISSION:

O P I N I O N.

DEATH VALLEY RAILROAD COMPANY applies for an order authorizing the issue of 234 of its bonds each of the face value of 100 pounds sterling in lieu of 234 of its said bonds heretofore issued without authority, and extending until January 1, 1917, the time within which it may issue 43 of its bonds authorized by Decision No. 3296, dated April 29, 1916. At the hearing it also asked authority to a separator and additional block of issue/43 of its said bonds authorized by Decisions Nos. 1330 and 1771, and remaining unsold, to reimburse its treasury for moneys expended from income for the construction of improvements and betterments. The time limit fixed in Decision No. 3296 will be extended by separate order in that proceeding. Application to issue both lots of bonds will be discussed herein.

By Decision No. 1330 of March 10, 1914,

applicant was authorized to execute trust deed securing the payment of 822 of its bonds, each of the face value of 100 pounds sterling, payable in not to exceed ten years from March 1, 1914, and to issue 473 of its said bonds on or before March 1, 1915, for the purpose of constructing a narrow gauge railroad connecting the Biddy McCarthy Borax Mine with the Tonopah & Tidewater Railroad at a point near Death Valley Junction, Inyo County. Of these bonds, 400 were issued on February 27, 1915, within the time limit.

Finding that the construction of the road would cost more than anticipated and that it was desirable to build an additional mile of track, the applicant asked and was granted authority by Decision No. 1771 of September 1, 1914, to issue 204 additional bonds under the same trust deed on or before March 1, 1915. (For these two decisions see Opinions and Orders of the Railroad Commission of the State of California, Vol. 4, p. 389, and Vol. 5, p. 353).

Borax Consolidated Company Limited operates the borax mine, guaranteed the bonds and financed the construction of the road. By February, 1915, it had advanced to applicant for construction purposes sufficient money to pay for 634 of applicant's said bonds at the price authorized, and applicant executed and forwarded to its treasurer in New York 634 of the 677 of said bonds authorized by Decisions Nos. 1330 and 1771, to be held subject to the order of Borax Consolidated Company Limited until it determined whether and when it would buy them. Actual sale and delivery to said company of 400 bonds was made February 27, 1915, and sale and delivery of 234 bonds was made to it February 29, 1916.

almost a year after authority therefor had expired.

Of the total of 677 bonds authorized for the construction of the road, applicant wishes to use the 43 bonds unsold to reimburse its treasury for betterments and additions added to the property since December 1, 1914, the date when the road was turned over to the operating department. Applicant submits a statement showing expenditures for grading, tracks, crossings and signs, shops, engine houses, machinery and equipment amounting to \$12,658.87 for the seven months ended June 30, 1915, and of \$20,490.79 for the year ended June 30, 1916, with certain credits totaling \$663.52 showing a net capital investment added since December 1, 1914 of \$32,486.14; far more than the proceeds of 43 bonds sold at 90% of their par value of 100 pounds each.

Applicant testified that it understood at the time of the transaction that its bonds were issued when they were executed and placed with its treasurer ready for sale, although not then sold or delivered. Until actual delivery of a contract note or bond no legal obligation is created against the maker. The word "issue" as used in the Public Utilities Act means execution and delivery of the instruments referred to.

O R D E R.

DEATH VALLEY RAILROAD COMPANY having applied to the Railroad Commission for authority to issue 234 of its bonds each of the face value of 100 pounds sterling in lieu of 234 of its said bonds heretofore issued without authority of the Commission, and to issue 43 of its said bonds

at 90% of their face value and use the proceeds to reimburse its treasury for betterments and improvements paid for out of earnings; and a public hearing having been held thereon and it appearing to the Commission that the money procured by the issue of said bonds is reasonably required for the purposes stated in this order, which purposes are not in whole or in part reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED by the Railroad Commission of the State of California that Death Valley Railroad Company be and it is hereby authorized and empowered to issue 234 of its bonds each of the face value of 100 pounds sterling originally authorized and more fully described by Decision No. 1330, dated March 10, 1914, in lieu of and upon the surrender to applicant of 234 of its said bonds heretofore issued to Borax Consolidated Company Limited on or about February 29, 1916, without the authority of the Commission.

IT IS FURTHER ORDERED that Death Valley Railroad Company be and it is hereby authorized to issue 43 of its said bonds more fully described in said Decision No. 1330 at 90% of the face value thereof net to applicant, the proceeds thereof to be used to reimburse applicant's treasury for betterments and improvements heretofore made by it.

The authority hereby given is upon the following conditions:

1. Death Valley Railroad Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds herein authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified re-

ports to this Commission setting forth the sale or sales during the preceding month, the terms and conditions of the 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 order, in so far as applicable, is made a part of this order.

2. The authority herein granted shall apply only to such bonds as shall have been issued hereunder on or before January 1, 1917.

3. This order shall not become effective until applicant has paid the fee prescribed by the Public Utilities Act.

19th Dated at San Francisco, California, this
day of October, 1916.

Max Thelen

J. H. Overland

Edwin O. Edgerton

Franz R. Werber
Commissioners.

