

ORIGINAL

Decision No. 3986

Decision No.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of
TIDEWATER SOUTHERN RAILWAY COMPANY
for authority to issue 485,508 shares
of its common stock of the par value
of \$1.00 per share.

Application No. 2604.

BY THE COMMISSION.

FIRST SUPPLEMENTAL OPINION.

TIDEWATER SOUTHERN RAILWAY COMPANY has outstanding 945,703 shares of stock of the par value of \$1.00 per share. Of this stock, 30,000 shares of the par value of \$1.00 per share are preferred and the balance are common. In addition, there is outstanding a certificate for 2,000,000 shares of common stock, which is held by Mr. Byron A. Bearce under an agreement that said certificate shall in 1919 be returned to applicant's treasury and canceled.

In its order in Application No. 2604, dated December 13, 1916, Decision No. 3931, this Commission authorized the applicant herein to sell 600,000 shares of its common stock at not less than 80 cents per share, and to use the proceeds for paying note indebtedness and for extending its line of railway southward in the San Joaquin Valley.

In said Application No. 2604, Tidewater Southern Railway Company also requested authority to issue 250,000 shares of its stock to Mr. Byron A. Bearce in return for certain properties and services and upon surrender by Mr. Byron A. Bearce to

the Tidewater Southern Railway Company of the certificate for 2,000,000 shares heretofore referred to. At the hearing upon this matter, Mr. Bearce asked that the request for the issue of 250,000 shares of stock to himself be held in abeyance.

Under date of December 27, 1916, Tidewater Southern Railway Company asked this Commission to proceed to a determination of its request "to terminate the special trust created for 2,000,000 shares of its common stock by freeing therefrom 250,000 shares and canceling the balance of 1,750,000 shares".

The applicant also requests the Commission to authorize it to exchange common stock share for share for its outstanding preferred stock, so as to retire the preferred stock.

The status of the certificate of 2,000,000 shares of applicant's stock now held by Mr. Byron A. Bearce is set forth in this Commission's Decision No. 116, (Vol. 1, page 232, Opinions and Orders of the Railroad Commission of California). It appears that 2,000,000 shares of stock were issued by the Tidewater and Southern Transit Company to Mr. Bearce prior to March 23, 1912, the effective date of the Public Utilities Act; that the Tidewater and Southern Transit Company was later consolidated with Tidewater and Southern Railroad Company into a new corporation known as Tidewater Southern Railway Company, and that Mr. Bearce was entitled under the terms of the consolidation to receive 2,000,000 shares of stock of the new company, - Tidewater Southern Railway Company. The Commission thereupon in Decision No. 116, heretofore referred to, authorized Tidewater Southern Railway Company to issue 2,000,000 shares of its stock to Mr. Bearce to carry out the terms of the agreement, which had been duly entered into prior to the effective date of the Public Utilities Act. The authorization, however, carried as a condition the requirement that Mr. Bearce should

file with the treasurer of Tidewater Southern Railway Company a written agreement to deliver to said applicant for cancellation on or before seven years from July 1, 1912, this certificate for 2,000,000 shares of common stock and that the certificate should be presented to the Railroad Commission for endorsement thereon of the following words:

"Issued for voting purposes only. Not to be transferred, and to be canceled and returned to the treasury on or before July 1, 1919, as provided in agreement dated July 1, 1912, between Byron A. Bearce and Tidewater Southern Railway Company."

It appears that the 2,000,000 shares of stock of Tidewater and Southern Transit Company were issued to Mr. Bearce for certain rights of way between Turlock and Fresno.

It is now proposed that Mr. Byron A. Bearce shall turn over to the applicant rights of way and other properties and shall retain 250,000 shares of said 2,000,000 shares of stock as compensation for these properties and in payment for his service in promoting, organizing, financing and managing the Tidewater Southern Railway Company to date.

It is fitting that Mr. Bearce should be compensated both for the properties he proposes to deed to the railway and for the services he has performed in its behalf. It is not possible accurately to measure the value of the services such as Mr. Bearce has rendered, but in a case involving the construction of a railroad from Blythe to Blythe Junction, a project of lesser magnitude than Tidewater Southern Railway Company, the Commission fixed the compensation of the projectors of the enterprise at \$75,000 payable in stock.

The value of the assets to be conveyed by Mr. Bearce to the railway company has been estimated by him at \$60,000.

It is the intention of Mr. Bearce and others whom he has interested in this project to provide further funds in substantial amounts for the extension and development of this railway

enterprise.

If this matter were before this Commission as an original proposition to authorize the issue of 250,000 shares of stock for the services of Mr. Bearce and his associates and for the assets which he proposes to convey to the railway, I should be inclined to hold that the compensation was extremely liberal.

I believe it distinctly to the advantage of the other shareholders in this enterprise, in view of all the circumstances involved, that the certificate of 2,000,000 shares be forthwith reduced to 250,000 shares.

Mr. Bearce has brought into association with himself in the railway project, interests which will provide money as needed for the further financing of the undertaking. Further extensions of the railway are contemplated and the funds now provided and in prospect appear to assure the full commercial development of the enterprise.

At the same time, I believe that the 250,000 shares of stock allowed to remain outstanding out of this certificate of 2,000,000 shares should be so held as to give prior position to all of the other stock and the order will so provide. In this way, the interests of the other stockholders in this enterprise will not only be amply protected but will be given the full benefit of the new funds to be provided.

Provision has been made in this Commission's Decision No. 3931, heretofore referred to, for the creation of a trust of 125,000 shares of stock. That feature may now be extinguished and a trust of 250,000 shares created out of the certificate of 2,000,000 shares heretofore referred to. This stock shall remain impounded to the extent of 250,000 shares, and shall be required to take a secondary position as to the assets of the railway for a period of five years. At the end of that period, by reason of the funds now

and hereafter to be invested, it may reasonably be permitted to share on an even basis with the other stock.

Applicant's request to exchange its preferred stock for common stock so as to eliminate the preferred stock is wholly reasonable and will entail the issue of 30,000 shares of common stock to retire a like number of shares of preferred stock.

We recommend that the application be granted, subject to the conditions contained in the order herein.

FIRST SUPPLEMENTAL ORDER.

TIDEWATER SOUTHERN RAILWAY COMPANY having applied to the Railroad Commission for a modification of its order heretofore issued in Application No. 38, (Vol. I, page 232, Opinions and Orders of the Railroad Commission of California) by terminating the special trust created for 2,000,000 shares of its common stock by freeing therefrom 250,000 shares and canceling the balance of 1,750,000 shares, and TIDEWATER SOUTHERN RAILWAY COMPANY having further requested authority to issue 30,000 shares of its common stock of the par value of \$1.00 per share in exchange for 30,000 shares of its preferred stock of the par value of \$1.00 per share,

And a public hearing having been held and it appearing that the purposes for which it is proposed to issue said stock are not in whole or in part reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED that this Commission's decision No. 116 in the matter of Application No. 38, (Vol. I, page 232, Opinions and Orders of the Railroad Commission of California) be modified by permitting the applicant herein - Tidewater Southern Railway Company- and Byron A. Bearce to terminate the special trust created for 2,000,000 shares of its common stock by freeing therefrom 250,000 shares and surrendering and canceling the balance of

1,750,000 shares.

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

1. Of the 2,000,000 shares of applicant's common stock held by Mr. Byron A. Bearce under special agreement as heretofore referred to, 1,750,000 shares shall be returned to applicant's treasury, to be issued thereafter only upon the approval of this Commission.

2. Of the remaining 250,000 shares of said certificate of 2,000,000 shares, a special trust shall be created by the terms of which the holder of said shares ^{or an equivalent amount of stock} to be designated by Mr. Byron A. Bearce, shall agree to withhold said 250,000 shares from sale for a period of five years from date and shall further agree that in case of the sale of the properties of Tidewater Southern Railway Company - on or before five years from date, said 250,000 shares of stock shall be entitled to participate in the benefits of said sale only after the balance of the outstanding stock of Tidewater Southern Railway Company shall have been paid at the rate of \$1.00 per share or only after an amount equal to \$1.00 per share for the balance of the outstanding stock shall have been duly deposited in a bank or banks for the benefit of the holders of said stock.

3. The agreement, providing for the creation of a trust for the 250,000 shares of applicant's stock, as set forth in the preceding paragraph shall be in a form satisfactory to this Commission, to be approved by this Commission in a supplemental order.

4. The 250,000 shares of stock to be held as a special trust as set forth in the two preceding paragraphs shall be so held for the benefit of Mr. Byron A. Bearce, or his nominee or nominees in compensation for properties to be deeded by said Byron A. Bearce to Tidewater Southern Railway Company, as set forth in ~~the preceding paragraph~~ Exhibit C, filed in connection with this application, and in full compensation for the services of Mr. Byron

A. Bearce and associates in promoting, organizing, financing and operating said railway to date.

5. The authorization herein shall not be binding upon this Commission, or other tribunal, as a recognition of any particular value to be attached to the services of Mr. Byron A. Bearce or the property to be conveyed by him to Tidewater Southern Railway Company as described in the foregoing Opinion.

IT IS HEREBY FURTHER ORDERED that Tidewater Southern Railway Company be granted authority, and it is hereby granted authority, to issue 30,000 shares of its common stock of the par value of \$1.00 per share in exchange for 30,000 shares of applicant's preferred stock of the par value of \$1.00 per share.

IT IS HEREBY FURTHER ORDERED that Condition No. 4 of this Commission's Decision No. 3931 in the above entitled matter and reading as follows:

"No. 4.- This order shall not become effective until Byron A. Bearce shall have impounded in a manner suitable to the Railroad Commission, \$125,000 par value of stock of Tidewater Southern Railway Company held by him, and shall have received from the Railroad Commission a supplemental order stating that this has been done."

be and the same is hereby vacated and annulled.

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

(a) Applicant shall report to this Commission on the 25th day of each month, stating in detail the action taken by it in pursuance of the order herein.

(b) The order herein given shall apply to such stock as shall have been issued and to such agreement as shall

have been entered into in relation to applicant's stock on or before June 30, 1917.

Dated at San Francisco, California, this 8th
day of January, 1917.

Max Thelen

H. Howard

Edwin V. Edgerton

Fraus R. Dehn

Commissioners.