

ORIGINAL

Decision No. 11818

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

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In the Matter of the Application of :
OAKLAND, ANTIOCH & EASTERN RAILWAY : Application
for leave to issue certain notes and : No. 1730
bonds. :

Jesse H. Steinhart for Applicant.
Allan P. Matthew and Howard D.
Smith, for certain objectors.

EDGERTON, Commissioner

OPINION ON APPLICATION FOR REHEARING

Applicants, who represent a comparatively small percentage of the outstanding bonds of Oakland, Antioch & Eastern Railway and Oakland & Antioch Railway, ask that the order heretofore made on November 20, 1915 and supplements thereto be revoked.

Under these orders Oakland, Antioch & Eastern Railway was authorized to issue bonds and notes under certain specified conditions.

Oakland, Antioch & Eastern Railway had in 1914 fallen into financial difficulties so that it became necessary in order to avoid receivership to in some way take care of the interest on its funded debt, which its revenues were not sufficient to meet.

A large majority of the bondholders and the managers of the company agreed upon a plan whereby the bondholders submitted to a postponement of the payment of their bond interest for a period of three years from January 1, 1915, it being understood that at the end of this period they were to receive bonds in lieu of cash for the deferred interest.

A stockholders' agreement was made whereby an assessment theretofore levied against the stock was to be changed in to a loan by the stockholders, the loan to be evidenced by notes with bonds as collateral security.

The company submitted these contracts to the Commission with its application, but the Commission specifically declared that it did not approve, directly, indirectly or by implication these financial plans; the Commission took the position that where the owners of bonds voluntarily agreed to a postponement of their interest that it should not interpose objection.

The Commission authorized the company to issue bonds under the following provisions:

"The bonds herein authorized to be issued may be sold to applicant's bondholders or stockholders for cash, or may be issued in lieu of bond interest earned and used by the company for capital purposes, at not less than 80 per cent of their face value plus accrued interest."

"The bonds hereby authorized to be issued, shall be only such bonds as are now pledged as collateral security for the applicant's note indebtedness."

Subsequent to the date of this Order this latter provision was modified in a slight degree only.

Notes were authorized to be issued upon the following terms, among others:

"The notes herein authorized to be issued in the sum of \$262,200 may be issued by the applicant to its stockholders for cash equivalent to the face value of said notes."

There was a further authorization permitting the company to pledge \$328,000 face value of bonds as collateral security for the \$262,200 of notes, provided that in the event of non-payment of these notes the stockholders could reduce the bonds to ownership only upon the minimum basis of eighty per cent of face value of such bonds compared with par of notes.

The protesting minority bondholders insist that the order of the Commission has permitted the company to put this plan in effect and that the plan was doomed to failure from the beginning.

A careful reading of the petition of these protesting bondholders and the brief and oral argument submitted on their behalf fails to disclose a clear and specific statement of the results hoped to be accomplished by a revocation of the Commission's order, except it is positively stated that such action would result in speedy reorganization of the company's capitalization.

No time need be wasted discussing the so-called financial plan of this company as it is admitted on all sides to be a failure. Nobody connected with this company or any of its securities has the slightest intention of attempting to carry out this plan. Further it is conceded that a complete and drastic reorganization of the capitalization of both companies will be necessary.

The managers of the two companies and the majority bondholders insist that plans are now being discussed for complete financial reorganization and we are urged by them not to revoke the orders heretofore made, first upon the ground that such revocation would be ineffective, in that bonds and

notes have been issued thereunder and a revocation of these orders would in no wise change the status of the holders of such bonds and notes; and further that the activities of the interested parties will result in a complete reorganization on which any action of this Commission revoking this order would have little effect.

Among other things the protesting bondholders insist that their position has been made worse during the past two years by reason of the workings of the so-called financial plan of the company.

The evidence, however, does not sustain this contention. The fact is that the net result of the workings of this plan are that there are \$5,000 face value of bonds more outstanding now than were outstanding at the time the plan was inaugurated and this \$5,000 face value of bonds is more than offset by additional funds in the treasury.

The evidence does not disclose any basis upon which it can be fairly claimed that the bondholders are in a worse position today because of the operation of this plan than they were before its being put into effect; unless it be contended that receivership would have been beneficial to the bondholders of both of these companies in 1915 as compared with reorganization in 1918.

In this connection attention is called to the fact that under the trust deeds securing the issuance of the bonds of both companies foreclosure proceedings ultimately rest with the holders of a majority in amount of the bonds outstanding. Therefore when a large majority of the bondholders, over eighty

per cent of total outstanding bonds, refuse to foreclose and urge upon this Commission such action as will permit them to postpone bond interest upon the assertion by them that this will afford opportunity for the company to avoid receivership, it is not reasonable to expect that the Commission at the instance of the holders of a very small percentage of total outstanding bonds would insist upon the financial ideas of the minority bondholders being put into effect rather than those of a large majority of the bondholders.

However, it is my judgment that the Oakland, Antioch & Eastern Railway and the Oakland & Antioch Railway are not in sound financial condition; that the plan now in effect will in no wise improve this financial condition and that it is imperatively necessary that immediate steps be taken to reorganize the financial condition and capitalization of these companies.

The revocation of the orders, as asked for by the protesting bondholders would in my judgment not necessarily bring about this result and therefore I recommend that the application for rehearing be denied; but that the attention of Oakland, Antioch & Eastern Railway and Oakland & Antioch Railway be directed to that portion of the order dated November 20, 1915 which is as follows:

"On or before January 1, 1918 the applicant shall report to this Commission a plan for the readjustment of its finances to meet its maturing obligations and to place it upon a permanent basis to meet its financial necessities."

and that assurance be given that the Commission will insist on the fulfillment of this requirement.

Herewith a form of Order:

O R D E R

Application having been made for a rehearing in the above entitled matter and a hearing thereon having been had and it appearing to the Commission for the reasons set out in the foregoing opinion that this application for rehearing should be denied, it is hereby ordered that the application for rehearing herein be and the same is hereby denied.

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 16th
day of November, 1917.

Marc Thelen
H. J. Loveland
Alfred Gordon
Edwin A. Edgerton
Commissioners.