

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of OCEAN SHORE RAILROAD COMPANY for authority to issue first mortgage bonds of the face value of \$700,000.

Application No. 32.

McCutchen, Olney and Willard, and A. C. Greene for applicant. Edward Lynch and J. F. Bluxome for L. Guggenlime, Intervenor. J. Howard Smith, Intervenor, in propria persona. Arthur Crane for Aalwyns Law Institute and others, Intervenor. Stratton, Kaufman and Torchiano, and Morrison, Dunn and Brobeck for Carrie E. L. Folger, Intervenor.

THELEN and LOVELAND, Commissioners.

O P I N I O N.

This is an application for authority to issue first mortgage bonds of the face value of \$700,000 and to pledge the same to secure a loan from the Union Trust Company in the amount of \$250,000. The bonds constitute the total authorized bonded indebtedness of applicant. They are to be 6% first mortgage gold bonds, are to be dated as of the first day of December, 1911, and are to be payable on the first day of December, 1916, unless sooner redeemed.

The proceeds from said loan of \$250,000 are to be expended for the following purposes:

- 1. To pay on account for real estate rights of way in the Potrero district in San Francisco and on terminal property at Twelfth and Mission streets, San Francisco, representing only a portion of the total cost of said properties, ----- \$90,091.17
2. To pay on account for equipment to complete the purchase of a steam shovel, ----- 4,000.00
3. To pay on account of locomotive to cost \$36,000, the sum of ----- 20,500.00

4. To pay on account of forty freight cars, the total cost of which will be \$48,000, the sum of----- \$33,000.00

5. To defray franchise requirements under franchises heretofore granted by the Board of Supervisors of the City and County of San Francisco, ----- 57,403.83

6. Terminal changes--moving to new terminal, including track work, crossings and new station buildings, a total cost of----- 45,000.00

\$250,000.00

Applicant states that the method of financing now proposed is only a temporary expedient, and that it will be necessary shortly to authorize a new bonded indebtedness to take up the indebtedness now proposed to be incurred, to release the five year bonds which it is now proposed to pledge, and to issue new long term bonds for permanent financing.

The following intervenors appeared:

L. Guggenime and J. Howard Smith, who are bond holders in the old Ocean Shore Railway Company, which company went through the hands of a receiver and was the predecessor of the present applicant; Aalwyns Law Institute and other stockholders in the late Ocean Shore Railway Company and xxx creditors thereof, all appearing in one intervention and represented by Mr. Arthur Crane; and Carrie E. L. Folger, the owner of certain property in San Francisco which applicant is now seeking to condemn for terminal grounds.

While the receivership proceedings affecting the old Ocean Shore Railway Company were pending, all the bondholders of that company united in the selection of five trustees to protect their interests. Under certain authority concerning the extent of which there is a dispute between the present applicant and bondholders representing about 25% of the total number of bondholders in the old Ocean Shore Railway Company, the trustees bought in the property of the Ocean Shore Railway Company at the receiver's sale, and after operating the property for a while, caused the incorporation of the

present applicant, the Ocean Shore Railroad Company. The present applicant thereafter authorized the issue of the bonds concerning which this Commission's order is now asked. The intervenors contend that the trustees have acted in breach of trust in numerous matters, including the organization of the present applicant, and particularly that the steps which have been taken in connection with the authorization of the bond issue of \$700,000 have been null and void. There are now pending at least five suits in the Superior Court in and for the City and County of San Francisco, and one suit in the Federal courts, directly raising these questions. Applicant admits that there is a substantial point at issue. In one of the suits now pending before the Superior Court, and raising all the material issues, an answer was filed a few days ago, so that the matter is now at issue. All the parties agree that the decision of this case will settle all the material questions as to which there is dispute.

On the introduction of this evidence, the Commission confined its attention to the question of the effect of the pending suits on possible action by the Commission in this proceeding and on the possibility of securing from the courts a speedy determination of the questions there at issue. The parties agreed that within at least a few months a decision could probably be secured from the Superior Court. On inquiry from the Commission, it appeared that the present directors of the applicant will probably be able to carry the Railroad Company for six months or so longer, even if a decision in this proceeding be deferred.

While this Commission desires to do everything in its power to expedite the rehabilitation of the applicant and to enable it to complete its line of railroad and fully equip its properties, we feel that in view of the fact that the very legality of the authorization of the bonds in this proceeding has been questioned and that a decision by the Superior Court may reasonably be expected within a few months, it would be wiser as a matter of

policy to defer further proceedings on this application at least until the Superior Court has spoken. We hope that all parties will expedite the proceedings before the Superior Court so that the applicant's line of railway may be rehabilitated at the earliest possible date.

In reaching this decision we wish to be clearly understood that the mere fact that someone questions the right of a utility to issue securities will not necessarily result in a refusal on the part of this Commission to issue the securities desired. In the present case, however, the legal proceedings were brought long before any application was made to this Commission, and the proceedings admittedly raise a substantial issue and were brought in good faith. It appears also in this case that a decision by the Superior Court may reasonably be expected within a short time. In view of all these facts, we have reached the conclusion that further action in this proceeding should be deferred at least until the Superior Court has rendered its decision, whereupon the applicant may again apply to the Commission.

We recommend herewith the following form or order:

O R D E R .

IT IS HEREBY ORDERED that further proceedings in the application entitled as above be suspended until the Superior Court of the State of California, in and for the City and County of San Francisco, has rendered its decision in one of the cases now pending before it, in which, among other things, is raised the issue of the legality of the authorization of the bonds whose issue this Commission is requested in the above entitled proceeding to authorize.

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.

