

ORIGINAL

Decision No. 5132

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Decision No. \_\_\_\_\_

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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In the Matter of the Reorganization of )  
NORTHERN ELECTRIC RAILWAY COMPANY, a )  
corporation, NORTHERN ELECTRIC COMPANY, )  
a corporation, NORTHERN ELECTRIC RAILWAY )  
COMPANY-MARYSVILLE AND COLUSA BRANCH, a )  
corporation, and SACRAMENTO AND WOODLAND )  
RAILROAD COMPANY, a corporation, and of )  
the application for authority to trans- )  
fer the properties of the last-mentioned )  
corporations to a new corporation and for )  
permission to issue stocks and bonds of )  
the said new corporation. )

Application  
Number  
1933.

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T.T.C. Gregory and Goodfellow, Eels, Moore & Orrick for  
railway companies;  
Frank D. Madison, O.K. Cushing, E.S. Heller and Walter D.  
Mansfield for the reorganization committee;  
Aaron L. Sapiro for A. Bonheim, et al;  
C.F. Humphrey for certain creditors;  
Hiram Johnson, Jr., for Mrs. A.A. DeLigne.

EDGERTON and GORDON, Commissioners.

O P I N I O N.

This application involves the sale and transfer of the so-called Northern Electric Railway properties operated by John P. Coghlan, receiver, to a new corporation and the issue of stocks and bonds by said new corporation to pay for said properties, to pay re-organization expenses and for such other purposes as the Railroad Commission may authorize.

On October 5, 1914, the District Court of the United States, Northern District of California, in response to a Bill of Complaint filed by General Railway Signal Company, a New York corporation, appointed John P. Coghlan receiver of all the properties of the Northern Electric Railway Company and directed him to take

possession, of manage and operate the properties. On March 1, 1915, upon a petition filed by the Sacramento and Woodland Railroad Company, Northern Electric Railway Company-Marysville and Colusa Branch, Northern Realty Company and Sacramento Terminal Company, the Court made its order extending the receivership to all of the properties of the petitioning corporations. On or about April 16, 1918, the Southern Division of the United States District Court for the Northern District of California ordered all of the properties of the aforementioned railway companies to be sold. For a description of the properties to be sold and transferred reference is here made to the decree of foreclosure filed in this proceeding and marked "Applicants' Exhibit No. 12". The sale of the properties is to occur on May 28, 1918. The Court has fixed the "upset price" at \$1,750,000. The Court in its decree of foreclosure calls attention to the fact that the properties described in Article XIV of the decree have been operated as a unitary system, that certain of the railroad companies own no equipment, that said properties are indivisible and of such a nature and are so situated that the same should be sold as an entirety. We are fully in accord with the decree of the Court in this regard and expect the new corporation to acquire all of the railway properties now in possession of and operated by John P. Coglan as receiver. The testimony in this proceeding shows that this will be done and that the properties now owned by four or more corporations will hereafter be owned and operated by a single corporation.

The reorganization committee which has prepared the "Amended Northern Electric Reorganization Agreement", a copy of which has been filed in this proceeding, contemplates acquiring the properties at the foreclosure sale and transfer/<sup>ring</sup> the same to a new corporation. The amended agreement provides that the new corporation will not assume any of the indebtedness of the present companies.

The new corporation is to have an authorized stock issue of \$5,200,000. divided into \$1,902,200 of 6% non-cumulative first preferred, \$957,800. of 6% non-cumulative second preferred and \$2,340,000. of common. In addition, the new corporation is to have an authorized 5% 20-year bond issue of \$5,500,000. divided into \$2,012,400. of Class "A", \$951,200. of Class "B", \$1,268,200 of Class "C" and \$1,268,200. of Class "D" bonds. The interest on Class "A" bonds is to be a fixed charge on and after July 1, 1917; on Class "B" bonds on and after July 1, 1919; on Class "C" on and after July 1, 1922 and on Class "D" on and after July 1, 1927. Because of the delay in putting the amended reorganization plan into effect, Class "A" bonds will bear interest from July 1, 1918. Interest on moneys paid in for Class "A" bonds prior to July 1, 1918 will be paid by interest checks. All classes of bonds are to be on an equal footing as to lien and security.

Class "A" bonds are offered to such owners and holders of bonds, as agree to the amended reorganization plan, issued by Northern Electric Company, Sacramento and Woodland Railroad Company and Northern Electric Railway Company-Marysville and Colusa Branch, hereinafter referred to as the underlying bondholders; to owners and holders of bonds issued by Northern Electric Railway Company, hereinafter referred to as the overlying bondholders, and to the owners and holders of 3-year secured gold notes. For each \$158.00 paid by the underlying bondholders, they will receive \$316.00 face value of Class "A" bonds; for each \$26.00 paid by the overlying bondholders, they will receive \$52.00 face value of Class "A" bonds and for each \$17.54 paid by the owners of 3-year gold notes, they will receive \$34.68 face value of Class "A" bonds. In addition to the payment of cash bonds must be surrendered in accordance with the plan.

The amended reorganization plan further provides that the Classes of "B", "C" and "D" bonds and the first preferred stock of the new corporation shall be allotted approximately five-sixths to the underlying bondholders and one-sixth to the overlying bondholders. The second preferred stock shall be allotted to the

overlying bondholders. Of the common stock, approximately \$1,300,000 per value shall be allotted to the overlying bondholders and an amount equal to 30 per cent of the unsecured notes and claims deposited with the reorganization committee shall be allotted to the unsecured creditors. Classes "B", "C" and "D" bonds and preferred and common stock distributed to the underlying and overlying bondholders shall be held in the same manner and for the same purposes in ownership or in pledge as the present bonds to be exchanged therefor are now held.

For each \$1,000.00 underlying bond deposited, the new corporation would issue:

Class "B" Bonds or participation certificates in the sum of	\$150.00
Class "C" Bonds or participation certificates in the sum of	200.00
Class "D" Bonds or participation certificates in the sum of	200.00
First Preferred Stock or scrip of the par value of	<u>300.00</u>
Total	850.00

For each \$1,000.00 overlying bond deposited, the new corporation would issue:

Class "B" Bonds or participation certificates in the sum of	\$ 24.35
Class "C" Bonds or participation certificates in the sum of	32.46
Class "D" Bonds or participation certificates in the sum of	32.46
First Preferred Stock or scrip of the par value of	48.67
Second Preferred Stock or scrip of the par value of	147.08
Common Stock or scrip of the par value of	<u>207.30</u>
Total	492.32

For each \$500.00 3-year gold note of Northern Electric Railway Company deposited, the new corporation would issue:

Class "B" Bonds or participation certificates in the sum of	\$ 32.46
Class "C" Bonds or participation certificates in the sum of	43.28
Class "D" Bonds or participation certificates in the sum of	43.28
First Preferred Stock or scrip of the par value of	64.90
Second Preferred Stock or scrip of the par value of	196.10
Common Stock or scrip of the par value of	<u>276.40</u>
Total	656.42

In addition, the new corporation would issue to the holders of unsecured notes of and claims against the Northern Electric Railway Company common stock equal in amount to 30 per cent of the face value of the unsecured notes or claims deposited under the

amended reorganization plan.

In the supplemental petition filed April 30, 1918 in the above entitled matter, applicants report that the following percentages of the total indebtedness held by secured and unsecured creditors referred to in the amended plan have assented to said plan:

- (a)-89.50 per cent in amount of Chico Electric Railway Company bondholders;
- (b)-96.47 per cent in amount of Northern Electric Company bondholders;
- (c)-81.69 per cent in amount of Northern Electric Railway Company bondholders;
- (d)-94.26 per cent in amount of Sacramento and Woodland Railroad Company bondholders;
- (e)-95.46 per cent in amount of Northern Electric Railway Company-Marysville & Colusa Branch bondholders;
- (f)-95.55 per cent in amount of Northern Electric Railway Company three year secured gold noteholders;
- (g)-96.88 per cent in amount of unsecured creditors.

The decree of foreclosure directs the reorganization committee to hold the amended plan open until the date of the confirmation of the sale of the properties, in order that any bondholder, noteholder, creditor or other person specified in the plan may deposit his securities or claims against the companies mentioned in the amended plan and become a party to the amended plan of reorganization by accepting and complying with the terms of said amended plan to the same effect as though he had assented thereto and become a party thereto within the time originally limited therein.

The testimony shows outstanding bonds, 3-year gold notes and claims as follows:-

<u>Bonds:</u> Chico Electric Railway Company .....	\$ 2,140,000.00
Northern Electric Company .....	3,770,000.00
Sacramento & Woodland Railroad Company .....	750,000.00
Northern Electric Railway Company-Marysville & Colusa Branch .....	750,000.00
Sacramento Terminal Company .....	150,000.00
Northern Electric Railway Company .....	6,256,000.00
<u>Three Year Secured Gold Notes:</u> Northern Electric Railway Company .....	191,000.00
<u>Unsecured Notes and Claims:</u> Northern Electric Railway Company .....	2,939,329.82

The payment of the Chico Electric and Sacramento Terminal bonds is taken care of by the decree of foreclosure.

Table Number "I" following shows how the stocks and bonds of the new corporation would be distributed assuming that all the owners and holders of bonds, -except Chico Electric and Sacramento Terminal bondholders, - the holders of the three year secured gold notes and of the unsecured notes and claims, deposit their securities and comply with the terms and conditions of the amended reorganization plan.

T A B L E N U M B E R O N E

STATEMENT SHOWING DISTRIBUTION OF BONDS AND STOCK OF CORPORATION TO BE FORMED TO TAKE OVER PROPERTIES OF NORTHERN ELECTRIC RAILWAY SYSTEM ASSUMING THAT ALL OF THE OWNERS AND HOLDERS OF BONDS, GOLD NOTES AND UNSECURED NOTES AND CLAIMS OF PRESENT COMPANIES APPROVE AMENDED REORGANIZATION PLAN.

Name of Present Issuing Company	Bonds, 3-Yr. Gold Notes and Unsecured Class Now Outstanding	Cash Payment for Class "A" Bonds	Bonds to be issued by new Corporation					Stock to be issued by new Corporation				TOTAL BONDS AND STOCK	
			Class "A"	Class "B"	Class "C"	Class "D"	Total	First Preferred	Second Preferred	Common	Total		
<b>BONDS:</b>													
Northern Electric Company	\$ 3,770,000.00	\$ 595,660.00	\$ 1,191,320.00	\$ 565,500.00	\$ 754,000.00	\$ 754,000.00	\$ 3,264,820.00	\$ 1,131,000.00	--	--	\$ 1,131,000.00	\$ 4,395,820.00	
Sacramento and Woodland Railroad Company	750,000.00	118,500.00	237,000.00	112,500.00	150,000.00	150,000.00	649,500.00	225,000.00	--	--	225,000.00	874,500.00	
Northern Electric Ry. Co. Marysville & Colusa Br.	750,000.00	118,500.00	237,000.00	112,500.00	150,000.00	150,000.00	649,500.00	225,000.00	--	--	225,000.00	874,500.00	
Northern Electric Ry. Co.	6,256,000.00	162,656.00	325,312.00	152,333.60	203,069.76	203,069.76	883,785.12	304,479.52	920,132.48	1,296,866.80	2,521,480.80	3,405,265.92	
<b>THREE YEAR GOLD NOTES:</b>													
Northern Electric Ry. Co.	191,000.00	2,623.88	13,247.76	6,199.86	8,266.48	8,266.48	35,980.58	12,395.90	37,455.10	52,792.40	102,643.40	138,623.98	
<b>UNSECURED CLAIMS:</b>													
Northern Electric Ry. Co.	2,939,329.82	--	--	--	--	--	--	--	--	881,798.94	881,798.94	881,798.94	
<b>Total Now Outstanding and to be Issued</b>	<b>14,656,329.82</b>	<b>1,001,989.88</b>	<b>2,003,879.76</b>	<b>949,033.46</b>	<b>1,265,336.24</b>	<b>1,265,336.24</b>	<b>5,483,585.70</b>	<b>1,897,875.42</b>	<b>957,587.58</b>	<b>2,231,460.14</b>	<b>5,036,923.14</b>	<b>10,570,509.84</b>	
<b>Unissued</b>	<b>--</b>	<b>--</b>	<b>8,520.24</b>	<b>2,166.54</b>	<b>2,863.76</b>	<b>2,863.76</b>	<b>16,414.30</b>	<b>4,324.58</b>	<b>218.42</b>	<b>108,539.88</b>	<b>113,076.86</b>	<b>129,491.16</b>	
<b>Total Authorized Stock and Bonds of New Corporation</b>	<b>--</b>	<b>--</b>	<b>2,012,400.00</b>	<b>951,200.00</b>	<b>1,268,200.00</b>	<b>1,268,200.00</b>	<b>5,500,000.00</b>	<b>1,902,200.00</b>	<b>957,800.00</b>	<b>2,340,000.00</b>	<b>5,200,000.00</b>	<b>10,200,000.00</b>	

Table Number "I" shows that if all the bonds and the three year secured gold notes of the present companies were deposited and the holders thereof complied with the amended plan, the corporation would realize \$1,004,151.88 from the issue of Class "A" bonds. Up to May 15, 1918, the amount of securities deposited call for the issue of \$1,881,474.20 of Class "A" bonds from which the company will realize \$940,737.10. Out of these proceeds, it is proposed to pay:-

(a).-Reorganization Expenses:

Incurred or to be incurred, approximately .....	\$ 50,000.00
Secretary and Reorganization Committee .....	22,500.00
Attorneys for Committee .....	25,000.00
Organization of new company and expenses incidental thereto including license, stamp and transfer taxes, estimated, .....	30,000.00
Depositaries .....	15,000.00
Sub-Total .....	\$142,500.00

(b).-Approximate Expenses as per Decree of Foreclosure:

Expenses of sale, Compensation of Master, Costs of Action, estimated, .....	5,000.00
Receiver and his Counsel Fees, estimated .....	50,000.00
Trustees' fees .....	18,000.00
Fee of Attorneys for Trustees .....	18,000.00
To pay Sacramento Terminal Company bonds and accrued interest .....	182,000.00
To pay Vallejo Commercial Bank note secured by mortgage .....	14,710.48
To pay Chico Electric Railway Company bonds .....	8,000.00
	\$295,710.48

(c).-To Pay Bondholders not joining in the Plan:..... 87,731.49

(d).-To pay interest on Class "A" bonds from April 1, 1918 to July 1, 1918. .....

	25,000.00
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Grand Total .....

	\$550,941.97
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Deducting from the \$550,941.97 the \$204,710.48 which the District Court ordered to be expended to pay the Sacramento Terminal Company bonds and accrued interest thereon, the Chico Electric Railway Company bonds and the note held by the Vallejo Commercial Bank, leaves \$346,231.49. Were all the bondholders to join in the amended plan the \$346,231.49 would be further reduced by the sum of \$87,731.49, the amount which it is estimated at present has



to be paid to non-assenting bondholders, or to \$258,500.00. The interest estimated at \$25,000.00 on Class "A" bonds from April 1, 1918 to July 1, 1918, should be paid out of the current assets turned over to the new corporation by the receiver, leaving \$233,500.00 what may be termed reorganization expenses to be paid from the proceeds of Class "A" bonds. The evidence does not show that the reorganization expenses are unreasonable, but we believe that they should be amortized, as in the case of the reorganization of Peoples Water Company (Decision Number 4034, dated January 20, 1917, Vol. 12, Opinions and Orders of the Railroad Commission of California, pg. 323).

The proceeds from Class "A" bonds remaining after the payment of reorganization expenses, court fees, trustees' fees and foreclosure expenses, it is proposed to expend for the acquisition of property and the construction of improvements, additions and betterments. The evidence does not show for what specific purposes the moneys will be expended. The order will, therefore, provide that the expenditures shall be incurred only for such purposes as the Railroad Commission may authorize in a supplemental order herein.

The Engineering Department of the Railroad Commission estimated the reproduction cost of the Northern Electric properties at \$10,324,788.00 and the reproduction cost less depreciation at \$9,154,905.00. A.S. Kibbe, consulting engineer for applicants, estimates the reproduction cost of the properties at approximately \$11,000,000.00 and the reproduction cost less depreciation at approximately \$10,000,000.00. Inasmuch as the amended reorganization plan provides for an issue of \$5,200,000.00 of stock and \$5,500,000.00 of bonds, the capitalization proposed can not be held unreasonable, provided the property can sustain the bond issue.

A. Sapiro, representing A. Bonnheim, et al, objects to the amended reorganization plan on the ground that it provides for the issue of four classes of bonds, that it calls for an excessive

bond issue and vests the control of the new corporation in the bondholders rather than in the stockholders through a voting trust and other arrangements. As already pointed out, the four classes of bonds are on an equal footing so far as security is concerned and differ only as to the date on which the interest becomes a fixed charge. The interest on Class "B" bonds becomes a fixed charge on July 1, 1919; on Class "C" bonds on July 1, 1922 and on Class "D" bonds on July 1, 1927. The issue of bonds in classes or series is not unusual and does not of necessity lead to confusion. We certainly cannot assume that an investor will purchase securities without some investigation and believe that a casual investigation would reveal the distinction between the classes of bonds which it is here proposed to issue.

Mr. Sapiro further contends that the earnings of the Northern Electric properties are inadequate to carry a \$5,500,000.00 bond issue. Assuming that all of the bonds are issued the interest requirements of the new corporation will be:-

Interest payment January 1, 1919 .....	\$50,310.00
Interest payment July 1, 1919 .....	50,310.00
Interest payment for years from July 1, 1919 to July 1, 1922 .....	148,180.00
Interest payment for years from July 1, 1922 to July 1, 1927 .....	211,590.00
Interest payment for years after July 1, 1927 .....	275,000.00

For the year ending December 31, 1917, the receiver for the Northern Electric properties reported revenues and expenses as follows:-

Gross Earnings .....	\$1,000,792.80
Operating Expenses .....	776,007.70
Net Operating Revenue .....	<u>224,785.10</u>
Less Taxes .....	<u>45,091.37</u>
Net Income available for interest or other charges .....	\$ 179,693.73

A. S. Kibbe in applicant's Exhibit No. 10 estimates that the earnings of the company will be more than adequate to

enable it to pay its interest when the same becomes a fixed charge. R. A. Sachse, chief engineer for the Railroad Commission, in the Commission's Exhibit No. 5, reports that in his opinion the properties will be able to take care of the interest requirements, at least until July 1, 1922, if a normal rate of earning increase continues. While the earnings of these or any other properties cannot be forecast with certainty, it appears to us that under an efficient and energetic management, the new corporation should be able to meet its proposed annual interest charge.

The amended plan provides that the new corporation shall have a board of directors consisting of 15 members, of whom, for the first year, 12 shall be selected by the bondholders and 3 by the stockholders. All the shares of stock, except those necessary to qualify directors, shall be deposited with the Union Trust Company of San Francisco under a voting trust agreement, said agreement to terminate on July 1, 1927, or earlier if the new corporation should pay interest on all of its outstanding bonds at the rate of 5 per cent per annum. This arrangement will vest the control of the new corporation in the bondholders. We believe that the stockholders should have all the power and control to which their ownership entitles them. We do not believe that bondholders should be given rights of control which properly belong to stockholders. Stockholders should not be restricted in their complete enjoyment of all their usual rights. However, as they have seen fit to surrender their rights, the Commission should not interpose any objection.

Neither the articles of incorporation nor the deed of trust of the new corporation have been filed with the Railroad Commission. Obviously, no final order can be made at this time in this proceeding. The Commission can authorize the transfer of the properties and indicate the maximum amount of stock and bonds which it will permit a new corporation to issue for the purposes mentioned

herein, a supplemental order or orders to be made when these matters are definitely presented to the Railroad Commission.

We herewith submit the following form of Order:-

### O R D E R

Application having been made to the Railroad Commission for an order authorizing the sale and transfer of the Northern Electric properties about to be sold at foreclosure sale and for an order authorizing the issue of stocks and bonds, and a public hearing having been held;

IT IS HEREBY ORDERED, that whosoever may be the purchaser of the properties of Northern Electric Company, Northern Electric Railway Company, Sacramento and Woodland Railroad Company, Northern Electric Railway Company-Marysville and Colusa Branch and Sacramento Terminal Company, now in receivership and about to be sold under a decree of foreclosure, be and the same is hereby, authorized to sell, transfer and convey all of the properties, real, personal and mixed, described in the decree of foreclosure - Applicants' Exhibit No. 12 - so purchased, to a corporation to be hereafter organized, and said corporation, when organized, is hereby authorized to acquire said properties and to issue in payment therefor, and for such/<sup>other</sup> purposes as the Railroad Commission may authorize, 5 per cent 20-year first mortgage bonds in an amount not to exceed \$5,500,000.00 and capital stock in an amount not to exceed \$5,200,000.00.

PROVIDED, that this order shall not become effective until a supplemental order shall have been made by the Railroad Commission after there has been presented to the Commission the name or names of the person or persons who may have purchased said properties at said foreclosure sale, the articles of incorporation and trust deed of the corporation hereafter to be organized to acquire said properties,

a complete description of the properties acquired at said foreclosure sale and to be transferred to said new corporation, together with a statement showing the amount of money received at the foreclosure sale.

PROVIDED FURTHER, that none of the moneys realized from Class "A" bonds shall be expended until a supplemental order or orders have been made by the Railroad Commission specifying the purposes for which said moneys may be expended.

PROVIDED FURTHER, that this order shall not become effective until there has been filed by a person or persons properly authorized, a stipulation to be approved by the Commission, to the effect, that the reorganization expenses will, at such times, in such amounts and in such manner as the Railroad Commission may order, be amortized out of income.

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 25<sup>th</sup> day of May, 1918.

Max Thelen  
H. S. Gordon  
W. G. Gordon  
Edwin O. Edgerton  
Franz P. Dolan

Commissioners.