

Decision NO. 5444

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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|---|---|----------------------|
| In the matter of the application of | } | Application No. 372. |
| Big Four Electric Railway Company, | | |
| a corporation, for an order authorizing | | |
| the issuance of 400,000 shares of | | |
| capital stock, par value \$400,000. | } | |

Frank A. Duryea for applicant.

GORDON, COMMISSIONER.

O P I N I O N

Big Four Electric Railway Company was incorporated in May, 1912, for the purpose of constructing and operating a standard gauge electric railway from Tulare via Woodville and Poplar to Porterville and also from Tulare to Visalia, the total distance covered by these proposed lines being approximately 41.25 miles. The company has an authorized capital stock of 500,000 shares of the par value of \$500,000, all of which stock is common. On September 10, 1912, the Commission made its order in Application No. 144, being the application of Big Four Electric Railway Company for permission to issue 100,000 shares of its capital stock. The Commission permitted the company to issue this stock upon certain conditions, one of the conditions being that the company should not commence the construction of its line of railroad until \$50,000 in cash had been realized from the sale of the stock and placed at the disposal of applicant. This condition was inserted for the purpose of requiring the company, prior to expending money for the construction of this railroad, to accumu-

late a sum which would indicate the presence of financial support reasonably sufficient to carry the enterprise through to completion. Applicant has never been able to satisfy this condition and hence is not at present engaged in constructing its line of railroad. To date, however, applicant has procured approximately 15 miles of right of way and also has about seven miles of its proposed line already graded, this grading having been done prior to the issuance of the order of this Commission already mentioned.

Applicant now has subscriptions to 89,654 shares of the 100,000 shares authorized to be issued. This leaves 10,346 of the authorized shares still unsubscribed. Of the subscribed stock, applicant has actually issued 12,320 shares.

The present financial condition of applicant is represented in the following balance sheet, as of January 31, 1913:

| <u>A S S E T S</u> | |
|--|------------------|
| Cost of Road - - - - - | \$11,853.13 |
| General Expenditures - - - - - | 7,208.87 |
| Tidewater & Southern Railway Company Stock - - - | 6,000.00 |
| Cash - - - - - | 383.04 |
| Accounts Receivable (Avery Investment Co.) - - - | 2,447.03 |
| Accounts Receivable (Subscriptions to Capital Stock) - - - - - | 34,884.50 |
| Notes Receivable (Account Subscriptions to Capital Stock) - - - - - | 33,550.00 |
| Unamortized Discount on Capital Stock - - - - - | 1,998.00 |
| Treasury Stock (Authorized by Railroad Com- mission but not negotiated) - - - - - | <u>10,346.00</u> |
| | \$108,670.57 |

| <u>L I A B I L I T I E S</u> | |
|----------------------------------|--------------|
| Capital Stock - Common - - - - - | \$100,000.00 |
| Notes Payable - - - - - | 4,750.00 |
| Accounts Payable - - - - - | 3,873.22 |
| Hospital Fund - - - - - | <u>47.35</u> |
| | \$108,670.57 |

The third item mentioned in this balance sheet represents 4,000 shares of stock of the Tidewater and Southern Railway Company now held by applicant. This stock was received from a stockholder of the Tidewater and Southern Railway Company, applicant giving in exchange therefor, 6,000 shares of its capital stock. This transaction not being authorized by this Commission was clearly illegal under the provisions of Section 51-b of the Public Utilities Act reading as follows:

"No public utility shall hereafter purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under or by virtue of the laws of this State, without having been first authorized to do so by the Commission."

Applicant, therefore, holds this stock of the Tidewater and Southern Railway Company without legal authority, and also has issued in exchange therefor 6,000 shares of its capital stock without compliance with the conditions imposed upon the issuance of applicant's stock in this Commission's order in Application No. 144. The attention of applicant was drawn to this matter in the order of the Commission made upon Application No. 144, and applicant has already been advised to dispose of this stock.

The Commission cannot permit applicant to include in its assets this 4,000 shares of Tidewater and Southern Railway Company stock, nor can it recognize as valid the issuance of the 6,000 shares of applicant's stock given in exchange therefor. The only course open to applicant is to annul this transaction, which, of course, includes a refund of the commissions, if any, paid for the purported sale of this 6,000 shares of applicant's stock. I recommend that applicant be given sixty days within which to dispose of the Tidewater and Southern Railway stock now held by applicant.

The fifth item in this balance sheet shows that the Avery Investment Company owes applicant the sum of \$2,447.03.

The Avery Investment Company has been engaged in selling stock for applicant and, according to the testimony of Mr. C. E. Russell, Secretary of the Big Four Electric Railway Company, the Avery Investment Company has been overpaid in commissions in the sale of stock to the amount of \$2,447.03. Applicant intends, by withholding commissions on present subscriptions to stock, as installments on such subscriptions fall due, to reimburse itself for this amount. I recommend, however, that applicant be required to also withhold all commissions payable upon stock subscriptions which may be taken by representatives of the Avery Investment Company in the future until this sum of \$2,447.03 has been paid.

As already stated, applicant has been unable to procure the \$50,000 in cash required by the Commission as a condition precedent to commencing the construction of applicant's line. Applicant, however, at the hearing presented a plan which it desires to put into effect as follows:

Applicant states that it is convinced that if it is allowed to begin the construction of its line, the sale of stock would be greatly facilitated, for the reason that it is far easier to arouse interest in a progressing enterprise. Applicant has certain stock subscriptions which have been taken in the various cities through which applicant proposes to construct its line, which stock subscriptions provide that a certain installment in cash shall be due and payable when the line of applicant has been graded to the city in question, and that a further installment shall be due and payable when the ties have been laid to this point, and the final installment due and payable when the rails have been laid to this point.

Applicant further stated that it had assurances of obtaining similar subscriptions to the amount of at least \$60,000 in the City of Porterville and \$40,000 in the City of Visalia.

Mr. W. H. Hahn, of the firm of Hahn and Sons, of Modesto, has entered into an arrangement with applicant, subject to the approval of this Commission, whereby Hahn and Sons shall proceed with the grading of applicant's line, in consideration of receiving an assignment of a portion of the installments due upon stock subscriptions as each of the different cities is reached. In case there should not be enough of these installments falling due to pay Hahn and Sons for their work, Hahn and Sons have agreed to receive in stock the remainder of the amount due them. In this manner applicant will be able to complete the grading of all of its proposed line without the expenditure of any cash. Applicant has presented this arrangement to the Commission in the form of a contract between applicant and Hahn and Sons, which contract the Commission is asked to approve. This arrangement, however, covers only the grading of applicant's road, and I therefore urge upon applicants, the necessity of diligently prosecuting the sale of its stock while the grading of its road is in progress in order that when the grading is completed, applicant will not be confronted with the same difficulties with which it is now faced.

I do not wish to impose conditions upon the issuance of applicant's stock which will terminate the existence of the company. I therefore recommend that the Commission approve the contract submitted by Hahn and Sons. In approving this contract, however, the Commission must not be understood as establishing a precedent for other cases or for other classes of construction work in this case.

I am still of the opinion, however, that before applicant is permitted to make expenditures for the laying of ties or rails on its proposed line, applicant shall have received and have on hand from the sale of stock, sufficient money to indicate that the

enterprise can be successfully completed. I therefore, recommend that applicant be required to impound all moneys received from past or future sales of stock, and that applicant be required to obtain the consent of this Commission prior to making any expenditure from the money so impounded. It should be provided in the order, however, that this latter requirement should not apply to the expenditures arising under the terms of the grading contract already mentioned, nor should it apply to the necessary current office expenses of applicant.

I am of the opinion that \$250 per month will cover the current office expenses of applicant. Inasmuch, however, as the use of applicant's central office is devoted in part to the work of selling stock, I recommend that one-half of this \$250 allowance be provided from commissions on the sale of stock.

Applicant estimates that the actual cost of the proposed road in money will be \$510,000. In Exhibit "D" to the application, applicant gives a detailed estimate of the cost of constructing this road, which may be summarized as follows:

| | |
|---|-------------|
| Rights of way and real estate - - - - - | \$27,500.00 |
| Grading - - - - - | 31,033.50 |
| Bridges and culverts - - - - - | 20,928.20 |
| Ties, rails, switches, ballast and tracklaying - - - - - | 299,780.00 |
| Roadway tools - - - - - | 2,000.00 |
| Fences, crossings and signs - - - - - | 15,800.00 |
| Telephone line - - - - - | 9,000.00 |
| General office and fixtures - - - - - | 2,000.00 |
| Shop machinery and tools - - - - - | 10,000.00 |
| Fuel storage - - - - - | 3,000.00 |
| Engineering - - - - - | 15,841.67 |
| Locomotive and cars - - - - - | 32,500.00 |
| Legal Expenses - - - - - | 9,901.04 |
| Stationery, printing, insurance and taxes - - | 12,000.00 |

Contingencies and interest - - - - - \$18,715.59
\$510,000.00

So far, applicant has obtained subscriptions to \$89,654 par value of stock, from which, however, must be eliminated the 6,000 shares given in exchange for the 4,000 shares of Tidewater and Southern Railway Company stock. This leaves 83,654 shares now subscribed. This stock is to be distributed in small amounts among a number of persons. It would be preferable in the development of a large enterprise of this kind if the energies of the company were directed rather toward interesting persons of large financial influence. The management of the sale of applicant's stock has not been conducted in a manner which would stimulate confidence in the success of the enterprise and in my opinion should be revised so as to place more emphasis on the development of the enterprise and less on the accumulation of stock commissions. If this suggested change is carried out, in my opinion applicant's chances of success will be greatly increased.

I recommend the following form of order:

O R D E R

Big Four Electric Railway Company having applied to this Commission for permission to issue its capital stock to the amount of \$400,000 for the purpose of constructing its proposed line of railroad from Tulare to Porterville and also from Tulare to Visalia,

And a public hearing having been held upon this application, and the Commission being of the opinion that the purposes for which this stock is to be issued are not in whole, or in part reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED that Big Four Electric Railway Company be and the same hereby is authorized to issue 400,000 shares of its capital stock of the par value of \$400,000 upon the following conditions and not otherwise, to-wit:

1. The stock herein authorized to be issued shall be sold at a price which will net applicant not less than eighty per cent of the par value thereof.

2. No commissions shall be paid, except upon cash actually received by applicant from the sale of stock, and such commissions shall not exceed twenty per cent of the cash so received.

3. No commission upon past or future sales of stock by the Avery Investment Company, or by its representatives, shall be paid by applicant until the entire amount of the present indebtedness of the Avery Investment Company to applicant has been paid in full.

4. The proceeds from the sale of the stock herein authorized to be issued shall be used, subject to the other conditions specified in this order, for the following purposes only:

(a) To discharge the outstanding indebtedness of applicant, which on January 31, 1913, amounted to \$8,670.57.

(b) In constructing and equipping applicant's proposed line of railroad and the procuring of rights of way therefor, the expenditures for this purpose to be made in accordance with the estimates submitted by applicant in Exhibit "D" attached to the application in this proceeding and a summary of which is set forth in the foregoing opinion.

5. Applicant shall impound all money received upon past or future sales of stock and shall make no expenditure from the money so received, unless specifically authorized to do so by this Commission. The Commission, however, gives its approval at this time to the grading contract entered into by applicant and Hahn and Sons, a copy of which contract is attached to the application in this proceeding, and marked Exhibit "E". The Commission also at this time gives applicant authority to assign to Hahn and Sons the installments upon stock subscriptions, which, by the terms of said contract, are to be assigned to Hahn and Sons in payment for the work of grading applicant's line of road. The Commission also gives applicant authority to make a monthly expenditure of \$125 for current office expenses.

6. Applicant shall not enter into any contract nor incur any liability or obligation of whatever kind, other than is included in said grading contract with Hahn and Sons, and other than the allowance for office expenses of \$125 per month, unless the approval of this Commission has first been obtained thereto.

7. Applicant shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the stock herein authorized to be issued, and on or before the 25th day of each month shall make a verified report to the Commission, stating the sale or disposition of said stock during the preceding month, the terms of such sale or other disposition and the application of the money realized from such sale or disposition, all in accordance with this Commission's General Order No. 24, which, in so far as applicable is made a part of this order.

8. The authority herein granted to issue stock shall apply only to stock issued prior to January 1, 1914.

IT IS FURTHER ORDERED that within sixty days from the date of this order applicant shall dispose of the 4,000 shares of Tidewater and Southern Railway stock now held by applicant, and upon the disposal of said stock applicant shall file with the Commission an affidavit stating that applicant has disposed of said stock.

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 *3rd* day of April, 1913.

H. B. ...
J. ...
Max Thelen

Commissioners.