

Decision No. 6099.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the matter of the application of
CALIFORNIA SOUTHERN RAILROAD COMPANY)
for an order authorizing the issue)
of stocks and bonds.)
.....)

Application No. 1790.

Ward Chapman for California Southern Railroad Company.
Oliver O. Clark for Blythe Construction Company.
Lucius K. Chase and Bert Campbell for Certain Settlers
of Palo Verde Valley.

MARTIN, Commissioner.

SECOND SUPPLEMENTAL OPINION

On February 25, 1918, California Southern Railroad Company filed with the Railroad Commission, in the above entitled matter, a supplemental petition wherein it asks the Railroad Commission to dismiss the supplemental petition filed April 2, 1917. Applicant also asks that a settlement of the construction accounts between Blythe Construction Company and California Southern Railroad Company and an adjustment of the capital account of the latter company be approved as set forth in the exhibits attached to the supplemental petition filed February 25, 1918.

It will be desirable to review briefly the history and present status of the proceeding.

By Decision No. 2910, dated November 19, 1915, the Railroad Commission authorized applicant, subject to certain conditions, to issue on or before December 31, 1916, \$360,000.00 par value of

common stock, \$350,000.00 of first mortgage 6 per cent bonds, and \$400,000.00 of second mortgage 6 per cent bonds.

Applicant reports that it has issued \$171,100 of the stock, \$213,000.00 of first and \$262,000.00 of second mortgage bonds, or a total of stock and bonds of \$646,000.00. The order of the Commission provided that of the \$350,000.00 of stock, \$75,000.00 might be issued to J. M. Neeland for services rendered in connection with the organization and promotion of the California Southern Railroad Company. The proceeds from the sale of the remaining stock, as well as the proceeds from the sale of the bonds, were to be used for the construction of applicant's line of railway from Blythe to Blythe Junction, in Riverside County, in accordance with the contract between applicant herein and Blythe Construction Company, a copy of which was filed with the Railroad Commission and marked Exhibit "A", or for such other purposes as the Commission might authorize by a supplemental order.

The construction contract between applicant and Blythe Construction Company contemplated the construction of the road for a total contract price of \$677,250.00 in accordance with the engineers' estimate and specifications made part of the construction contract, dated March 30, 1915. The construction contract provided that

"If changes are to be made diminishing or increasing the quantity or extent of the work covered in the contract, the amount payable to the contractor shall then be diminished or increased proportionally and in accordance with the price specified in the contractor's estimate referred to."

The construction of applicant's road was begun on April 1, 1915. The testimony shows that the Blythe Construction Company

completed the road on August 8, 1916, and that it was turned over to the operating department on November 1, 1916. In building the road, Blythe Construction Company did not follow the original contract specifications. Adjustments of the contract price became necessary and applicant proposed to settle with Blythe Construction Company for \$575,225.04. This settlement was analyzed by the Commission's engineering department which suggested a settlement at \$536,021.44. The reasons for the revision of the settlement figure are set forth in the Commission's Exhibit No.1, filed on May 24, 1917. Applicant has informed the Commission that it is willing to settle with the Blythe Construction Company at \$536,021.44, and asks the Commission to approve this settlement.

At the time the applicant submitted to the Commission its original settlement figure, it contemplated - and later actually did - file a supplemental petition for authority to issue securities to effect the settlement with the Blythe Construction Company. In the petition filed on April 2, 1917, applicant asks authority to issue \$10,000.00 of its first mortgage 6 per cent bonds and \$90,000.00 of its second mortgage 6 per cent bonds and \$68,000.00 of common stock for the purpose of effecting a settlement with the construction company and of completing the capitalization of its road. This supplemental petition applicant now asks to have dismissed. Had the Commission been called upon to pass upon the supplemental petition filed on April 2, 1917, the reasonable cost and value of applicant's road would become important factors in the Commission's decision.

The supplemental petition filed on February 25, 1918, and the testimony offered in support thereof present a different situation. It is now alleged, and the testimony shows, that the

railroad company can effect a settlement with the Blythe Construction Company without the issue of any additional stocks and bonds. The testimony further shows that applicant will be able to meet all of its obligations set forth in the supplemental petition filed on February 25, 1918, without resorting to the issue of additional securities.

It is not customary for the Commission to approve settlements between public utilities and contractors and there is nothing in the previous orders made by this Commission in this application that would require the approval of the Commission of such a settlement in this case. It is a fact, however, that the Commission has been advised of the relations between the railroad company and the construction company since prior to the beginning of the construction of the line and has at all times had complete access to the records of both the carrier and the contractor. The detailed construction and financial history of the applicant is therefore known to the Commission. This knowledge enables the Commission to reach the conclusion that in a settlement between the railroad company and the construction company the railroad company under no circumstances should pay to the contractor a sum in excess of the proposed settlement figure, viz., \$536,021.44.

I do not believe it necessary, however, for the Commission formally to pass upon the proposed settlement. The proposed settlement figure, of course, cannot in any sense be construed as a finding of the value of this railroad for rate fixing or any other purpose and no such issue is at this time present for the Commission's consideration.

As stated, the testimony shows that applicant can meet all of its obligations referred to in the supplemental petition

filed on February 25, 1918, without the issue of any additional securities. The Commission should not authorize applicant to issue any additional stocks, bonds, notes or other evidences of indebtedness to capitalize its existing properties. Further issue of securities, if necessary, should be confined to the purpose of financing extensive improvements, or the construction of extensions, additions and betterments to applicant's properties.

I herewith submit the following form of Order:

THIRD SUPPLEMENTAL ORDER

CALIFORNIA SOUTHERN RAILROAD COMPANY having filed supplemental petitions herein as outlined in the foregoing supplemental opinion, a hearing having been held, and the Commission being of the opinion that the supplemental petitions referred to in the foregoing supplemental opinion should be dismissed without prejudice,

IT IS HEREBY ORDERED That the supplemental petition filed in the above entitled matter on April 2, 1917, and the supplemental petition filed in the above entitled matter on February 25, 1918 be, and the same are hereby, dismissed without prejudice, the former at the request of applicant, the latter for the reasons stated in the foregoing supplemental opinion.

The foregoing Second Supplemental Opinion and Third Supplemental Order are hereby approved and ordered filed as the Second Supplemental Opinion and Third Supplemental Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of February ~~January~~, 1919.

Edwin O. Edgerton
Francis P. Colver
Dwight Martin

commissioners.