

ORIGINAL

Decision No. 894

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
Oakland, Antioch & Eastern Railway)
for a decision as to whether or not)
certain bonds have been issued, and)
for permission to issue the same.)

Application No. 666.

Jesse Steinhart for applicant.

THELLEN, Commissioner.

O P I N I O N

This is an application of the Oakland, Antioch & Eastern Railway for a decision of this Commission as to whether certain bonds of said company have been issued, under the provisions of the Public Utilities Act, and if not, for an order of this Commission authorizing such issue. The application refers to that portion of this Commission's decision No. 771 in Application No. 608, rendered on application of Oakland, Antioch & Eastern Railway on July 2, 1913, reading as follows:

"Applicant stated that it had placed \$500,000 of its bonds on contract and some uncertainty was expressed whether these bonds were actually issued under the terms of the Public Utilities Act. In order to obviate any misunderstanding on this point, applicant's attorney stipulated that before it finally placed these bonds it would submit the question of their issue to the Commission for determination. The hearing upon the present application included also the \$500,000 of bonds in question and the authorization to issue the \$1,000,000 of bonds as applied for assumes that there will be an early determination of the status of the \$500,000 of bonds above mentioned."

In said decision No. 771, this Commission authorized the issue by Oakland, Antioch & Eastern Railway of bonds of the face

value of \$1,000,000 for the purpose of meeting past and future expenditures in connection with the construction of applicant's line of railway from Bay Point in Contra Costa County to the city of Sacramento. The bonds affected by this proceeding are five hundred bonds of the face value of \$1,000 each, numbered 2501 to 3000, inclusive. On March 20, 1912, three days before the effective date of the Public Utilities Act, the Oakland, Antioch & Eastern Railway entered into a contract with H. C. Breeden of the city and county of San Francisco, in which contract the railway company agreed to sell and Mr. Breeden agreed to buy these bonds at the price of 85 per cent of their face value plus accumulated interest. It was provided that Breeden could take up the bonds in blocks of fifty each. All of the bonds were to be taken and paid for within two years. They were to be placed in escrow with the Union Trust Company of San Francisco, which company was instructed to make delivery at any time within the life of the contract upon receiving the purchase price, after deducting overdue interest. It was further provided that the contract might be terminated by either of the parties during its life, upon the payment to the other of the sum of \$500. These bonds were placed in escrow with the Union Trust Company under this agreement prior to March 23, 1912. None of them were ever paid for by Mr. Breeden, and all of them are still with the Union Trust Company, which company has become Breeden's assignee under the contract. Subsequent to March 23, 1912, at a time when Mr. Breeden was a director of the Oakland, Antioch & Eastern Railway, these bonds were pledged by Breeden to the Union Trust Company as security for a note of the railway company in the amount of \$300,400. Mr. Breeden was not a director of the railway company at the time the agreement was entered into.

While there is nothing said in the agreement with reference to the payment of any amount of money to bind the contract, applicant testified that it believed that \$100 had been paid on the agreement.

This Commission has heretofore held that bonds would not be regarded as having been issued prior to the effective date of the Public Utilities Act, unless before that time they had actually been delivered for value. This value must not be merely colorable, and it must appear that delivery was made in good faith for the purpose of actually passing title under an agreement which the parties did not expect thereafter to cancel. It is evident that the bonds now referred to were delivered on the payment of the most nominal consideration to bind the bargain, under an agreement under which either party could cancel the contract under the payment of another nominal consideration, which consideration might be waived by consent of the other party. It should also be remembered that the transaction was consummated only three days prior to the effective date of the Public Utilities Act.

Taking into consideration all the facts in the case, I am of the opinion that these bonds have not been issued as that word is used in the Public Utilities Act. Mere delivery to a bank or trust company in escrow, does not necessarily constitute delivery. Whatever the intention may have been, the jurisdiction of this Commission still attaches to these bonds, and they will be regarded in this opinion as though they had never been issued.

The applicant now asks that if these bonds have not been issued, this Commission make its order authorizing their issue, either for use as collateral as security for promissory notes which shall be in an amount not less than 60 per cent of the face

value of such bonds as may be pledged, or for the purpose of sale at not less than 80 per cent of their face value, in which event the proceeds would be used to pay indebtedness heretofore incurred or hereafter to be incurred for the construction of applicant's line of railway between Bay Point and Sacramento.

The purposes for which said indebtedness has been incurred or would be incurred, are specified in Exhibit B attached to the petition in Application No. 608, which exhibit is hereby referred to. This exhibit shows the total estimated expenditures from Bay Point to Sacramento on this Commission's final summary sheet for physical valuation of electric railroads. The exhibit shows the estimated total original cost of construction to be \$3,707,330, and the estimated reproduction value to be \$4,390,523. The difference is represented chiefly by the increase in the value of land.

In its opinion and order in Application No. 608, this Commission carefully examined applicant's financial condition and held that on the assumption that the \$500,000 of bonds herein referred to were issued, it could authorize the issue of an additional \$1,000,000 of bonds. Since the date of this Commission's decision on said application, applicant has levied an assessment of \$5.00 per share on 100,000 shares of outstanding stock. Applicant testified that it was confident that practically all of the assessment would be paid, thereby materially strengthening its financial condition.

I find the proceeds of the bonds hereby authorized to be issued are not reasonably chargeable to operating expenses or to income.

On the basis of the conclusion reached by this Commission in Application No. 608, I recommend that the application be granted

and submit herewith the following form of order:

ORDER

Oakland, Antioch & Eastern Railway having applied to this Commission for a decision as to whether or not its bonds Nos. 2501 to 3000 inclusive, referred to in agreement between said company and H. E. Breeden dated March 20, 1912, have been legally issued, and if they have not been so issued, for an order of this Commission authorizing their issue for purposes hereafter specified; and a public hearing having been held on said application;

The Railroad Commission hereby finds as a fact that said bonds have not been legally issued as said words are used in the Public Utilities Act;

And the Commission further finding that the purposes for which the bonds hereinafter authorized to be issued are not in whole or in part reasonably chargeable to operating expenses or to income;

IT IS HEREBY ORDERED, as follows:

(1) Oakland, Antioch & Eastern Railway is hereby authorized to issue its bonds numbered 2501 to 3000, inclusive, of the total face value of five hundred thousand (500,000) dollars, said bonds to be payable on the first day of October, 1941, and to bear interest at the rate of five per cent (5%) per annum, payable semi-annually, under and in pursuance of a deed of trust or mortgage executed by said Oakland, Antioch & Eastern Railway to Union Trust Company of San Francisco as trustee, under date of October 1, 1911, on the following conditions and not otherwise:

(a) Said bonds may be pledged in whole or in part

as security for indebtedness heretofore or hereafter incurred for the purposes specified in Exhibit B attached to the petition in application No. 608, said indebtedness to be evidenced by promissory notes of a face value not less than sixty per cent (60%) of the face value of such bonds as may be pledged as collateral security; or,

- (b) Before or after such pledge, said bonds may be sold so as to net said company not less than eighty per cent (80%) of the par value of the principal thereof, besides interest accrued thereon, in which event the proceeds shall be applied only for the purpose of completing its line of railway from Bay Point, Contra Costa county to Sacramento, Sacramento county, and in the completion of its branch line from Bay Point to Antioch, Contra Costa county, and for such betterments and in substantially such amounts as are set forth as "original cost" in said "Exhibit B" filed with the petition in Application No. 608, and more specifically, for the payment of such accounts payable and notes payable as have heretofore accrued and been given or as may hereafter accrue or be given for said purposes.

(2) Oakland, Antioch and Eastern Railway shall keep separate, true and accurate accounts, showing the receipt and application in detail of the proceeds from the sale or pledge of the bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month it shall make verified reports to the Commission stating the sale or sales or pledge of said bonds during the preceding month, the terms and conditions of sale or pledge, the moneys or property realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.

(3) The authority hereby given to pledge or sell bonds shall not become effective until said bonds Nos. 2501 to 3000, inclusive, shall have been returned to the treasury of Oakland, Antioch & Eastern Railway, and the agreement for the sale thereof cancelled and a certified copy of such agreement as cancelled, filed with this Commission.

(4) The authority hereby given to issue bonds shall apply only to such bonds as may be issued prior to August 15, 1914.

(5) The authority hereby given to issue bonds is contingent upon the payment of the fee specified in section 57 of the Public Utilities Act as amended.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 19th
day of August, 1913.

H. B. Loveland

Alvin G. ...

Max Thelen

Commissioners.

Railroad Commission State of California
5000.00
SEP 5 1913
H. M. ...
Assistant Secretary.