

ES

Decision No. 8998.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE
STATE OF CALIFORNIA.

In the Matter of the Application of)
THE WESTERN PACIFIC RAILROAD COMPANY,)
of FRANKLIN V. SPOONER, ROBERT R. PARDOW,)
and JOHN C. RUED, and of HENRY E. COOPER,)
A.M. HUNT, JAMES D. PHELAN, GEORGE)
WHITTELL, DAVID R. MORGAN, I DeBRUYN,)
C. LEDYARD BLAIR, FREDERICK H. ECKER,)
STARR J. MURPHY, ROBERT W. MARTIN,)
WILLIAM SALOMON and RICHARD B. YOUNG,)
as the re-organization committee con-)
stituted by the plan and agreement of)
re-organization of WESTERN PACIFIC RAIL-)
WAY COMPANY, for authorization of pro-)
ceedings pursuant to said plan and)
agreement of re-organization.)

Application
Number
2351

BY THE COMMISSION:

FIFTH SUPPLEMENTAL ORDER.

WHEREAS, the Railroad Commission by its order in Decision No. 3505, dated July 12, 1916, (Vol. 10, Opinions and Orders of the Railroad Commission of California, pg. 563) authorized THE WESTERN PACIFIC RAILROAD COMPANY, among other things, to issue \$20,000,000.00 face value of bonds and use the proceeds from the sale of the bonds for the following purposes:

- "(1) To pay the distributive shares of non-assenting bondholders, underwriting commission, expenses of foreclosure and re-organization, including court costs, compensation and allowances of the receivers and their counsel, the mortgage trustee and its counsel, taxes on the creation and issue of new securities, compensation and expenses of the protective and re-organization committees, their depositaries and counsel, fees of engineering,

"accounting and other experts, engraving, printing and miscellaneous requirements, not to exceed the sum of \$2,000,000.00.

"(2) When detailed statements of the purposes for which the following expenditures are to be incurred shall have been filed by The Western Pacific Railroad Company, the proceeds from the sale of said bonds may be used, in general, for the following purposes:

- "a. For betterments to the existing property of Western Pacific Railway Company, not to exceed the sum of,.....\$2,597,750.00
- "b. For the acquisition of new passenger and freight equipment, not to exceed the sum of...3,514,000.00
- "c. For the acquisition by purchase, construction or otherwise of extensions and feeders, including payment of interest during construction, the acquisition of additional new property, the payment of receivers' car trust obligations, the provision of working capital for The Western Pacific Railroad Company, and the possible protection of claims against The Denver and Rio Grande Railroad Company, not to exceed the sum of,.....10,506,250.00"

and,

WHEREAS, the Commission by Decision No. 4488, dated November 27, 1917, modified its order of July 12, 1916, so as to permit The Western Pacific Railroad Company to expend for the purchase of 1500 box cars and 400 gondola cars \$2,500,000.00, said \$2,500,000.00 being in addition to the \$3,514,000.00 appropriated by the order of July 12, 1916 to purchase equipment; and

WHEREAS, applicant in a supplemental petition, filed on April 26th in the above entitled matter, reports that it has not applied or used any of the \$2,500,000.00 to acquire the 1500 box cars and 400 gondola cars, but that it has purchased other equipment for use in the operation of its railroad consisting of 700 general service freight cars, gondola type, at an approximate cost of

\$1,864,884.00, of which amount it has paid from its free funds \$937,575.06; that it has also purchased five (5) locomotives at an approximate cost of \$653,135.75, making a total expenditure of \$2,218,019.75, and that it has now available and on deposit a total of \$10,080,925.28 of the funds mentioned in the Commission's order of July 12, 1916; and

WHEREAS, applicant in a supplemental petition filed April 26, 1921 in the above entitled matter asks the Commission to consolidate the funds referred to in its order of July 12, 1916, under a single heading and permit applicant to use --

"All or any part of the funds referred to in the First Supplemental Order for the betterment, improvement and equipment of any line of railroad, terminal facilities or other property of the Applicant, or of a subsidiary company of the Applicant, or for the construction or acquisition of extensions to or additional lines of the Applicant, or of a subsidiary company thereof, including branch lines and feeders, for the acquisition of shares of stock or bonds or other obligations of a subsidiary company, and the payment, redemption or acquisition of the bonds or other obligations or indebtedness secured by lien or charge on any property on account of which bonds or the proceeds thereof have been applied under the First Mortgage of the Applicant; for interest during construction as authorized by said Mortgage, and for the reimbursement of the Applicant for moneys expended by it since the date of the First Supplemental Order for any of the purposes above mentioned."

and;

WHEREAS, the Commission has considered applicant's request and is of the opinion that the Commission's order of July 12, 1916, as amended, should be modified only to the extent herein indicated and that applicant should file with the Commission a statement or statements of its proposed or actual expenditures which it desires to pay or refund by using proceeds from the sale of the bonds referred to in said order of July 12, 1916, as amended, and that said proceeds should be used as the Railroad Commission may in this supplemental order or subsequent supplemental orders, authorize.

NOW, THEREFORE, IT IS HEREBY ORDERED, that the order in Decision No. 3505, dated July 12, 1916, as amended, be, and it is hereby, modified so as to permit The Western Pacific Railroad Company to consolidate the funds referred to in said order under a single heading or fund and to use not exceeding \$2,218,019.75 of the moneys in said fund to pay for the cars and locomotives referred to in applicant's supplemental petition filed April 26, 1921 in the above entitled matter, or to reimburse its treasury on account of having used income to pay for said cars and locomotives, or to refund indebtedness incurred for the purpose of paying for said cars and locomotives.

IT IS HEREBY FURTHER ORDERED, that the order in Decision No. 3505, dated July 12, 1916, as amended, shall remain in full force and effect, except as modified by this Fifth Supplemental Order.

Dated at San Francisco, California, this 21st day of May, 1921.

H. B. Ludwig
H. W. Loveland

L. P. Benedict

Commissioners.