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ORIGINAL

Decision No. 9620.

BEFORE THE RAILROAD COMMISSION OF THE
STATE OF CALIFORNIA

In the Matter of the Application of
 the Sacramento Northern Railroad, a
 corporation, Sacramento Northern Rail-
 way, a corporation, The Western Pacific
 Railroad Company, a corporation, for an
 order of the Railroad Commission of the
 State of California, (1) authorizing
 said Sacramento Northern Railroad to
 sell all of its properties, rights and
 franchises to said Sacramento Northern
 Railway; (2) authorizing said Sacramento
 Northern Railway to issue in connection
 with said transaction nine hundred and
 ninety five thousand dollars per value
 of its capital stock, and (3) authorizing
 The Western Pacific Railroad Company to
 purchase said capital stock of the Sacra-
 mento Northern Railway; and the outstan-
 ding bonds of said Sacramento Northern
 Railroad, and to reimburse itself for
 such expenditures from the proceeds of
 its bonds.

Application
Number
7147

Sidney M. Ehrman for Sacramento Northern Railroad;
 Jared How and Lester J. Hinsdale for Sacramento Northern
 Railway and The Western Pacific Railroad Company;
 Robert Duncan for Miles Standish and P. Connolly, Inter-
 venors.

BENEDICT, Commissioner.

O P I N I O N.

This application, as amended, involves the sale and
 transfer of the properties of SACRAMENTO NORTHERN RAILROAD to SAC-
 RAMENTO NORTHERN RAILWAY; the issue of \$1,000,000.00 of common stock
 by SACRAMENTO NORTHERN RAILWAY; the assumption of the payment of the
 bonded indebtedness of SACRAMENTO NORTHERN RAILROAD by SACRAMENTO
 NORTHERN RAILWAY; the purchase of the stock of SACRAMENTO NORTHERN
 RAILWAY by THE WESTERN PACIFIC RAILROAD COMPANY and the expenditure

of proceeds by The Western Pacific Railroad Company obtained from the sale of bonds.

Sacramento Northern Railroad was authorized by Decision No. 5432, dated May 25, 1918, as amended, (Vol. 15, Opinions and Order of the Railroad Commission of California, pg. 747) to issue not exceeding \$5,200,000.00 of stock and \$5,500,000.00 of bonds to acquire the properties formerly owned by Northern Electric Railway Company and its affiliated and subsidiary companies. Under the authority granted by the Commission, Sacramento Northern Railroad issued stock as follows:-

Common,.....	\$1,883,382.65
Second Preferred 6% non-cumulative...	793,152.19
First Preferred 6% non-cumulative,..	<u>1,808,362.31</u>
Total,.....	\$4,484,897.15

Of the \$5,500,000.00 face value of bonds authorized to be issued, Sacramento Northern Railroad issued \$5,224,374.14, divided into the following four classes:-

Class "A" 5%, interest payable from July 1, 1918,.....	\$1,908,811.56
Class "B" 5%, interest payable from July 1, 1919,.....	904,269.66
Class "C" 5%, interest payable from July 1, 1922,.....	1,205,645.96
Class "D" 5%, interest payable from July 1, 1927,.....	1,205,645.96

The four classes of bonds are equally secured by the terms of the mortgage under which they were issued and differ from each other only in respect to the dates on which the interest payments become effective.

CAB
Under date of ^{January} ~~July~~ 20, 1921, The Western Pacific Railroad Corporation offered to buy all the bonds and stock of the Sacramento Northern Railroad. This offer was renewed under date of August 25, 1921 by The Western Pacific Railroad Corporation, which has agreed to keep the offer open for ten days after action by the Railroad Commission of California and the Interstate Commerce Commission approving the sale of the properties of the

Sacramento Northern Railroad pursuant to the offer of The Western Pacific Railroad Company. The Western Pacific Railroad Corporation has offered to pay \$27.50 per share for trust certificates representing first preferred stock of Sacramento Northern Railroad; \$15.00 per share for trust certificates representing second preferred stock of Sacramento Northern Railroad, and \$6.00 per share for trust certificates representing common stock of Sacramento Northern Railroad. The bonds of the Sacramento Northern Railroad (of whatever class) The Western Pacific Railroad Corporation offered to acquire by exchanging first mortgage bonds of The Western Pacific Railroad Company issued under its mortgage dated June 26, 1916 on the basis of \$80.00 face value of such bonds for \$100.00 face value of Sacramento Northern Railroad bonds. Charles Elsey, secretary of The Western Pacific Railroad Company, testified that as of the close of business September 24, 1921, The Western Pacific Railroad Corporation had acquired \$5,144,279.13 face value of the bonds and \$4,348,096.64 par value of the outstanding stock of Sacramento Northern Railroad. As of the date mentioned, The Western Pacific Railroad Corporation had acquired more than 97 per cent. of the outstanding stock and more than 98 per cent. of the outstanding bonds of Sacramento Northern Railroad. Of the outstanding stock \$136,800.51 par value, and of the bonds \$80,094.01 face value have not been deposited under the offer made by The Western Pacific Railroad Corporation. The Western Pacific Railroad Company, controlled through stock ownership by The Western Pacific Railroad Corporation, under date of August 9, 1921, offered to purchase all of the properties of Sacramento Northern Railroad at a cost of \$730,000.00 cash and assume the payment of the outstanding bonds of Sacramento Northern Railroad and the performance of all other obligations. The offer provides that the properties shall be transferred to a corporation to be

organized by The Western Pacific Railroad Company bearing the name of Sacramento Northern Railway, or other appropriate name selected by The Western Pacific Railroad Company. To consummate this transaction, The Western Pacific Railroad Company has caused to be organized the Sacramento Northern Railway with an authorized stock issue of \$1,000,000.00 and has agreed to purchase all of such stock to enable the Sacramento Northern Railway to purchase the properties of Sacramento Northern Railroad and make improvements. It appears from the testimony that the only reason for organizing the Sacramento Northern Railway is the fact that The Western Pacific Railroad Company cannot expend any proceeds from the sale of its first mortgage bonds to improve or extend the properties of a subsidiary company unless it owns all of the outstanding stock of such subsidiary company. Inasmuch as all of the stock of the Sacramento Northern Railroad has not been deposited under the offer made by The Western Pacific Railroad Corporation, The Western Pacific Railroad Company is prevented by the terms of its first mortgage from using any of the proceeds obtained from the sale of its first mortgage bonds to extend or improve the service of the Sacramento Northern Railroad. The service will be improved and extended, according to the testimony of C.M. Levey, president of The Western Pacific Railroad Company after the Sacramento Northern Railroad properties are transferred to the Sacramento Northern Railway, all of whose stock will be owned by The Western Pacific Railroad Company.

Miles Standish and P. Connolly, intervenors, represented by Robert Duncan, protest against the granting of this application on the ground, among others, that the price offered for the properties of Sacramento Northern Railroad is inadequate and that the transfer of the properties will result in actual or implied fraud upon the rights of the intervenors and other stock

or bondholders who have not deposited their stock and bonds.

The Commission has on several occasions announced that it did not have sufficient jurisdiction to determine charges of fraud and that such charges must be adjudicated in the courts. The Commission is interested primarily in the transfer of these properties from two points of view, -first, that the price being paid is not excessive; and -second, that the transfer is in the interest of the public. In Decision No. 5432, dated May 25, 1918, the Commission referred to findings of its Engineering Department and of A.S. Kibbe, consulting engineer. In its decision, the Commission says:-

"The Engineering Department of the Railroad Commission estimated the reproduction cost of the Northern Electric properties at \$10,324,788 and the reproduction cost less depreciation at \$9,154,905. A.S. Kibbe, consulting engineer for applicants, estimates the reproduction cost of the properties at approximately \$11,000,000 and the reproduction cost less depreciation at approximately \$10,000,000. Inasmuch as the amended reorganization plan provides for an issue of \$5,200,000 of stock and \$5,500,000 of bonds, the capitalization proposed cannot be held unreasonable, provided the property can sustain the bond issue."

Charles Elsey estimates the total cost of the securities which The Western Pacific Railroad Company intends to acquire at \$4,450,000.00, an amount which is considerably less than the estimated reproduction cost new less depreciation of the properties. Interveners urge that the price offered for the properties is inadequate, and therefore the application should be denied. The fact, however, remains that the holders of more than 97 per cent. of the stock and the holders of more than 98 per cent. of the bonds of Sacramento Northern Railroad consider the price adequate and have deposited their stock and bonds. The Commission cannot settle a controversy of the character indicated in this proceeding between stock and bondholders. It might be mentioned, however, that because of the preference given to the holders of the first preferred stock of Sacramento Northern Railroad by the articles

of incorporation of that company, the net proceeds realized from the sale of its property in case of liquidation will go to the holders of the first preferred stock.

The record leaves no doubt in my mind . . . that the transfer of the properties of the Sacramento Northern is in the interest of the public. The testimony is conclusive that the Sacramento Northern Railroad has not sufficient funds to develop properly its properties and meet the needs of the shipping and traveling public. The Western Pacific Railroad Company, on the other hand, has the funds required to improve the present service and construct extensions to the existing lines. Its equipment will become available to its subsidiary, the Sacramento Northern Railway.

The Western Pacific Railroad Company asks permission to use not exceeding \$4,450,000.00 of the proceeds obtained from the sale of its first mortgage bonds, the issue of which has heretofore been authorized by the Commission, to acquire the stock of Sacramento Northern Railway and the bonds of Sacramento Northern Railroad. This request of the company, I believe, should be granted and the order in Decision No. 3505, dated July 12, 1916, as amended, and the order in Decision No. 8834, dated April 9, 1921, modified accordingly.

I herewith submit the following form of Order.

O R D E R

Application having been made for permission to transfer properties, issue stock and acquire properties, as indicated in the opinion which precedes this order, a public hearing having been held, and the Railroad Commission being of the opinion that the money, property or labor to be procured or paid for through the issue of stock herein authorized is reasonably required for the purposes specified in this order and that the expenditures herein

permitted are not in whole or in part reasonably chargeable to operating expenses or to income;

IT IS HEREBY ORDERED as follows:-

1.--Sacramento Northern Railroad be, and it is hereby, authorized to sell and transfer for the sum of \$730,000.00, in cash, all of its properties, more particularly described in Schedule "1", attached hereto, to Sacramento Northern Railway, in accordance with the terms of the agreement, a copy of which marked Exhibit "F" is filed in this proceeding.

2.--Sacramento Northern Railway be, and it is hereby, authorized to purchase the properties of Sacramento Northern Railroad; to issue and sell, for cash, on or before April 1, 1922, at not less than par \$1,000,000.00 of its common stock; to assume the payment of the outstanding bonds of the Sacramento Northern Railroad and the performance of the covenants and conditions of the mortgage securing the payment of said bonds and to execute all deeds and assignments necessary to complete the transfer of the properties which it is hereby authorized to acquire.

3.--The Western Pacific Railroad Company be, and it is hereby, authorized to purchase the \$1,000,000.00 of stock of Sacramento Northern Railway.

4.--The order in Decision No. 3505, dated July 12, 1916, as amended, and the order in Decision No. 8834, dated April 9, 1921, be, and they are hereby modified so as to permit The Western Pacific Railroad Company to use not exceeding \$4,450,000.00 of the proceeds obtained from the sale of first mortgage bonds, the issue of which is authorized by said decisions, to acquire the stock of the Sacramento Northern Railway and the bonds of the Sacramento Northern Railroad, or reimburse its treasury on account of the moneys expended for the purchase of said stock or bonds.

5.— Sacramento Northern Railway be, and it is hereby, permitted to use not exceeding \$730,000.00 of the proceeds obtained from the sale of its stock to acquire the properties of Sacramento Northern Railroad. The remainder of the proceeds obtained from the sale of its stock, the Sacramento Northern Railway may use as working capital.

6.—Sacramento Northern Railway shall keep such record of the issue and sale of the stock herein authorized and of the disposition of the proceeds as will enable it to file on or before the 25th day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

7.—The consideration being paid for the properties of Sacramento Northern Railroad shall not be urged before this Commission, or other body having jurisdiction, as a basis of rates, or for any purpose other than the transfer herein permitted.

8.—The authority herein granted will apply only to such transfer of properties as may be effected on or before April 1, 1922.

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 18th day of October, 1921.

H. A. Brundage
H. D. Loveland
Oliver H. ...
J. J. ...

Commissioners.

SCHEDULE I

The properties authorized to be transferred by the order preceding this schedule and the conditions of transfer are as described in Exhibit "F" filed in this proceeding, which reads:

"THIS AGREEMENT, made this first day of September, 1921, by and between the Sacramento Northern Railroad, a corporation organized and existing under the laws of the State of California, hereinafter called the "Railroad Company", party of the first part, and the Sacramento Northern Railway, a corporation organized and existing under the laws of the State of California, hereinafter called the "Railway Company", party of the second part.

W I T N E S S E T H

THAT in consideration of the mutual covenants and agreements herein set forth, the parties hereto hereby agree each with the other as follows, to wit:

FIRST: Subject to the conditions hereinafter set forth the Railroad Company hereby covenants and agrees to sell and convey to the Railway Company, and the Railway Company agrees to purchase from the Railroad Company for the sum of Seven Hundred and Thirty Thousand Dollars, all and singular the following described lines of railroad, terminals, lands, equipment, shares of stock, and real and personal property owned by the Railroad Company, to wit:

1. A main line of railroad commencing at and in the Town of Hamilton in the County of Glenn, State of California; running thence in a general southeasterly, easterly and southerly direction through the said County of Glenn and the Counties of Butte, Sutter, Yuba and Sacramento to and through the City of Sacramento in said County of Sacramento, and to the west bank of the Sacramento River in the County of Yolo, passing through the City of Chico in said County of Butte, the town of Yuba City in said County of Sutter and the City of Marysville in said County of Yuba, and including a line of railroad leaving the above described line at a station known

as Tres Vias in the County of Butte and running thence in a general easterly direction into the Town of Croville in said County of Butte, said line of railroad being about 107 miles in length.

2. A line of railroad commencing at a station on the above described line known as Heyman, in the County of Sutter; running thence in a general westerly and northwesterly direction through said County of Sutter and the County of Colusa to and through the Town of Colusa in said County of Colusa,-- being about 22 miles in length.

3. A line of railroad commencing at a connection with the railroad described in paragraph 1, above, on the west bank of the Sacramento River in the County of Yolo; running thence in a general northwesterly and westerly direction through said County of Yolo to and through the City of Woodland in said County of Yolo, including a line of railroad on Second Street in said City of Woodland,-- being about 17 miles in length.

4. A branch line of railroad, having its initial point and connection with the railroad described in paragraph 1, above, at a station thereon in the County of Sacramento, known as Globe, and extending thence in a northeasterly direction to a station known as Swanston in said County of Sacramento,-- being about 1.4 miles in length.

5. A line of railroad commencing at and in the town of Vacaville in the County of Solano; running thence in a general southeasterly direction to a station on the proposed line of railroad hereafter mentioned known as Vacaville Junction; thence in a general southwesterly direction along said proposed line to a station thereon known as Willotta, including a branch line from a point on said line at or near the town of Fairfield; running thence through the Town of Fairfield and the town of Suisun City, all in the said County of Solano, having a length of about 15 miles; also all franchises and rights of way for the purpose of constructing, maintaining and operating a proposed line of railroad commencing at a connection with the railroad described in paragraph 1, above, on the west bank of the Sacramento River in the County of Yolo; running thence in a general westerly, southwesterly and southerly direction through the counties of Yolo, Yuba and Solano to and through the City of Vallejo in said County of Solano, and passing through said above mentioned stations of Vacaville Junction and Willotta, said proposed line being about 60 miles in length.

6. All local electric street railway lines in and about the City of Chico in the County of Butte, and in the town of Yuba City, in the County of Sutter, and the City of Marysville, in the County of Yuba, and in the City of Sacramento, County of Sacramento.

7. All franchises, rights and privileges and all terminals and all lands and interests in lands, easements therein and improvements thereon, including among other things the rights of way, yards, roadbeds, roadways, tracks, sidetracks, turnouts, sidings, switches, bridges, culverts, embankments, tunnels, depots, freight houses, warehouses, stations, car houses, power houses, transformer houses, buildings, structures, shops, rails, poles, pole lines, cables, wires, fixtures and furniture, docks, wharves, piers, ships, telephone and telegraph lines and other structures and erections and the appurtenances of all and every of the fore-

going, whether or not for use in connection with said or any lines of railroad, or said or any proposed lines of railroad.

8. All rolling stock, cars, motors, engines, equipment; all machinery, dynamos, tools, implements and appliances, all electrical generating and transmission and other electrical apparatus, and all other equipment, apparatus, appliances and facilities.

9. The estates, interest and rights of the Company under any and all leases, leaseholds, rights under leases or contracts, trackage agreements, traffic agreements and operating agreements.

10. The following shares of stock in other corporations:

755 shares of the par value of \$100 each of the capital stock of the Northern Realty Company.

350 shares of the par value of \$100 each of the West Side Railroad Company.

13000 shares of the par value of \$1 each of the Northern Warehouse Company.

10 shares of the par value of \$100 each of the East Nicolaus Warehouse Company.

10 Shares of the par value of \$100 each of the Cottell Warehouse Company.

11. All those certain parcels of land and other properties, rights and interests described in the following deeds executed by the Northern Realty Company to Sacramento Northern Railroad:

Deed dated November 29th, 1920, recorded in the records of Solano County, California, in Book 249 of Deeds, page 234;

Deed dated November 29th, 1920, recorded in the records of Colusa County, California, in Book 98 of Deeds, page 222;

Deed dated November 29th, 1920, recorded in the records of Sutter County, California, in Book 71 of Deeds, page 297;

Deed dated November 29th, 1920, recorded in the records of Yuba County, California, in Book 75 of Deeds, page 341;

Deed dated November 29th, 1920, recorded in the records of Butte County, California, in Book 187 of Deeds, page 431;

Deed dated November 29th, 1920, recorded in the records of Sacramento County, California, in Book 551 of Deeds, page 189;

Deed dated February 4th, 1921, recorded in the records of Sacramento County, California, in Book 551 of Deeds, page 387.

Also all other real property or any interest therein belonging to the Railroad Company of every kind and nature whatsoever.

12. Also all bonds, securities, moneys, accounts and bills receivable, claims, and all other property, interests and rights which shall belong to the Railroad Company or to which it may be entitled, at the time of the execution and delivery of the instruments of conveyance and assignment of the properties aforesaid.

The Railroad Company covenants and agrees that upon the making of the orders of the Railroad Commission of California and of the Interstate Commerce Commission, as set forth in paragraph third hereof, it will execute and deliver to the Railway Company such deeds and other instruments of conveyance and assignments as shall be necessary to vest in the Railway Company title to all of the properties aforesaid, subject, however, to the liens, bonds, indebtedness, and obligations referred to in paragraph second hereof.

SECOND: The properties, rights, and franchises are to be sold and conveyed as aforesaid, subject to the lien of a Mortgage and Deed of Trust executed by the Railroad Company to the Mercantile Trust Company of San Francisco, as Trustee, dated July 1, 1918, under which bonds to the amount of Five Million Two Hundred and Twenty-four Thousand Three Hundred and Seventy-three Dollars and Fourteen Cents (\$5,224,373.14), aggregate par value, are now outstanding, and also to all other lawful obligations, contracts and indebtedness of the Railroad Company existing at the time of such conveyance and transfer.

The Railway Company further agrees that in consideration of the sale of the properties aforesaid, it will assume and agree to pay the principal and interest of such bonds as the same shall respectively become due, and will perform each and all of the covenants and conditions of the said Mortgage and Deed of Trust, and in every respect comply with all the terms and conditions imposed by Article IX of said Mortgage and Deed of Trust upon any corporation which shall purchase as an entirety all of the property of the Railroad Company; also to assume and agree to

STATE OF CALIFORNIA,)
CITY AND COUNTY OF SAN FRANCISCO) ss.

On this 3rd day of September, 1921, before me, Alice Spencer, a Notary Public in and for the said City and County, residing therein, duly commissioned and sworn, personally appeared Sidney M. Kernal known to me to be the Vice-President of the Sacramento Northern Railway road, the corporation that executed the within instrument, and known to me to be the person who executed such instrument on its behalf, and he acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of my office in the City and County aforesaid, the day and year in this certificate first above written.

(SEAL)

Alice Spencer
Notary Public in and for the
City and County of San Francisco,
State of California.

STATE OF CALIFORNIA,
City and County of San Francisco. } ss

On this 2nd day of September, 1921, before me
FLORA HALL, a Notary Public in and for the said City and
County, residing therein, duly commissioned and sworn, per-
sonally appeared Stephen F. Otis known to me to be the
President of the Sacramento Northern Railway, the corpora-
tion that executed the within instrument, and known to me
to be the person who executed such instrument, on its behalf,
and he acknowledged to me that such corporation executed the
same.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the official seal of my office in the City and
County aforesaid, the day and year in this certificate first
above written.

(SEAL)

FLORA HALL
Notary Public in and for the
City and County of San Francisco,
State of California.