

Decision No. 23928

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
LOS ANGELES & SALT LAKE RAILROAD
COMPANY and UNION PACIFIC RAILROAD
COMPANY for an order authorizing
the former company to lease its
railroad properties to the latter
company.

Application No. 18754

E. E. Bennett, for applicant.

BY THE COMMISSION:

O P I N I O N

In this proceeding the Los Angeles & Salt Lake Railroad Company (hereinafter sometimes called the Salt Lake) asks permission to lease, demise, assign and transfer all of its lines of railroad, together with all the rights, privileges, franchises, rolling stock and other property appertaining thereto, to Union Pacific Railroad Company (hereinafter sometimes called the Union Pacific) its successors and assigns, for a term continuing from the effective date of the lease to December 31, 1933, and from year to year thereafter until terminated by either party by at least three months notice in writing.

A copy of the proposed lease is filed in this proceeding as Exhibit No . 3.

The Union Pacific owns directly or indirectly the entire capital stock (\$25,000,000.00) of the Salt Lake. It also owns directly or indirectly all (\$59,022,000.00) of the outstanding bonds

of the Salt Lake. In addition, Salt Lake was, as of December 31, 1932, indebted to Union Pacific in the sum of \$32,609,702.84. The main line of the Salt Lake extends from Los Angeles to Salt Lake City. The lines in the State of California are in this application described as follows:-

The main line of railroad extending from Los Angeles through Riverside, San Bernardino and Daggett to the Nevada State Line, of which the mileage between Riverside Junction and Daggett is owned by The Atchison, Topeka & Santa Fe Railway Company and operated by the Salt Lake under a trackage or joint use contract.

A branch line from Los Angeles, through the City of Long Beach by two routes, to Los Angeles harbor.

A branch line from Los Angeles to Pasadena with a branch therefrom at Rock Junction to Glendale.

A branch line from Whittier Junction on the said main line to Anaheim.

A branch line from Riverside on the said main line to Rialto.

The Railroad Commission has of course no authority over the properties of the Salt Lake situate in states other than California. We question, however, whether in view of the provisions of Section 51 of the Public Utilities Act, the Salt Lake properties in California can be leased to the Union Pacific without the Commission's authorization. Section 51 reads in part as follows:-

"No public utility shall henceforth sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the railroad commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing the same shall be void."

The Union Pacific agrees to operate the leased properties and to maintain them in a proper state of repair and to bear all

cost and expense thereof chargeable to operating expenses, or otherwise than to property investment accounts. The Union Pacific also agrees to pay all taxes and assessments except such taxes as are chargeable to property investment accounts. It further agrees to perform all covenants on the part of the mortgagor contained in any mortgage made by the lessor or its corporate predecessor to which the demised premises or any part thereof are subject, except covenants to pay the principal of the indebtedness secured by such mortgage and except covenants to replace the mortgaged properties. The lessee assumes and agrees to perform and observe all obligations of the lessor under any and all leases, trackage contracts, franchises, ordinances, easements, licenses and other contracts transferred to the lessee by this lease, provided that for all expenditures chargeable to investment account, the lessee shall be reimbursed by the lessor.

The Union Pacific agrees to pay the Salt Lake as rent for the properties at the end of each calendar year except as otherwise hereinafter provided, the following amounts:-

(a) The amount of all interest accruing for the duration of this lease on the funded indebtedness of the Lessor at the time outstanding; the same to be payable as and when such interest matures.

(b) The amount of depreciation upon rolling stock and equipment and of depreciation upon and depletion of any and all other property included in the demised premises, which shall be accrued by the Lessor in its accounts for the duration of this lease and allowed as a deduction in computing the Federal income tax liability of the Lessor.

(c) The amount allowed for the duration of this lease as a deduction in computing the Federal income tax liability of the Lessor as amortization of bond discount.

(d) Such amount as may be reasonably required by the Lessor for maintaining and preserving its corporate existence and organization, but only in the event and to the extent that the Lessor shall not have income from other sources adequate for this purpose."

The lease gives the lessee the right to construct or acquire any additions to and betterments or extensions of the demised premises which it may deem desirable in the interest of the demised premises as a whole or advantageous in the operation thereof. All such additions and extensions shall become the property of the lessor and the lessor shall reimburse the lessee to the extent of the cost incurred by it therefor, chargeable to property investment account.

Though the Salt Lake is a wholly owned subsidiary of Union Pacific, it appears that certain economies can be effected by the execution of the lease. We have no objection to the execution of the lease, provided Union Pacific by a proper and duly executed resolution of its Board of Directors agrees to assume the obligations imposed upon the Salt Lake by lawful orders of this Commission, and likewise will agree to assume the obligations which may hereafter be imposed upon the Salt Lake by lawful orders of this Commission. We believe that the filing of such a resolution should be a condition precedent to the effective date of the order herein.

If any order of this Commission requires the expenditure of funds chargeable to the property investment accounts, we believe that Union Pacific should assume the responsibility of providing such funds. The lease provides, as indicated above, that the lessor shall reimburse the lessee for any expenditures which the lessee may make for additions, betterments and extensions chargeable to property investment accounts.

Because of the provisions of the lease we will expect the Union Pacific to file with this Commission, unless otherwise directed, an annual report on the Interstate Commerce Commission, State Commission form, and also file with the Commission copies

of the monthly financial and operating reports which it now files with the Interstate Commerce Commission. We will expect the Salt Lake to file with the Commission, unless otherwise directed, an annual report form similar to that required by the Interstate Commerce Commission of lessor companies.

ORDER

The Commission having considered the request of the Los Angeles & Salt Lake Railroad Company to lease, demise, assign and transfer its properties to Union Pacific Railroad Company, a public hearing having been held before Examiner Kennedy, and the Commission having considered the record in this proceeding and being of the opinion that this application should be granted subject to the provisions of this order, therefore,

IT IS HEREBY ORDERED, that Los Angeles & Salt Lake Railroad Company be, and it is hereby, authorized to lease, demise, assign and transfer on or before January 1, 1934, its properties described in this application, to the Union Pacific Railroad Company under the terms and conditions of the indenture of the lease filed in this proceeding as Exhibit No. 3, which indenture of lease the Los Angeles & Salt Lake Railroad Company is hereby authorized to execute, provided that the authority herein granted will not become effective until there has been filed, in satisfactory form, (1) a duly authorized resolution of the Board of Directors of Union Pacific Railroad Company, in which said Union Pacific Railroad Company agrees that it will assume the obligations imposed upon the Los Angeles & Salt Lake Railroad Company by lawful order of the

Railroad Commission of the State of California, or which may hereafter be imposed upon said Los Angeles & Salt Lake Railroad Company by lawful orders of said Railroad Commission of the State of California; and further, that if any lawful order of the Railroad Commission of the State of California requires or should require the expenditure of funds by the lessor Los Angeles & Salt Lake Railroad Company, of funds chargeable to the property investment accounts, the Union Pacific Railroad Company assumes the responsibility of providing such funds, notwithstanding any provisions of the lease herein authorized to be executed; and (2) also a duly authorized resolution of the Board of Directors of Union Pacific Railroad Company in which said Union Pacific Railroad Company agrees to file with the Railroad Commission of the State of California copies of the monthly financial and operating statements which it files with the Interstate Commerce Commission and an annual report in the form required by said Railroad Commission of the State of California; and further, (3) a duly authorized resolution of the Board of Directors of Los Angeles & Salt Lake Railroad Company wherein that company agrees to file an annual report in the form required by said Railroad Commission of the State of California.

If, and when the foregoing resolutions, in form satisfactory, are filed with the Commission, further order will be issued fixing the effective date of this order.

DATED at San Francisco, California, this 8th day of May, 1933.

Q. L. Stearns
Leon Whitehead
W. H. Can
W. B. Harris
M. L. Harris