

Decision No. 26376

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
BAKERSFIELD AND KERN ELECTRIC RAIL-  
WAY COMPANY, a corporation, and SAN  
JOAQUIN LIGHT AND POWER CORPORATION,  
a corporation, for an order of the  
Railroad Commission authorizing the  
former to sell and convey to the  
latter certain properties and the  
latter to lease to the former certain  
properties.

Application No. 19065

In the Matter of the Application of  
SAN JOAQUIN LIGHT AND POWER CORPORA-  
TION, a corporation, for an order  
authorizing it to sell the entire cap-  
ital stock of Bakersfield and Kern  
Electric Railway Company now owned by  
it, etc.

Application No. 19066

F. H. Pearson, for applicants.

BY THE COMMISSION:

O P I N I O N

In Application No. 19065 Bakersfield and Kern Electric Railway Company asks permission to sell to the San Joaquin Light and Power Corporation for the sum of \$33,418.23 the real property and transportation equipment hereinafter described. The San Joaquin Light and Power Corporation asks authority to lease to the Bakersfield and Kern Electric Railway Company said transportation equipment and some of said real property pursuant to the terms and conditions of the lease filed in such proceeding as Exhibit "C" of Exhibit No. 1.

In Application No. 19066 the San Joaquin Light and Power Corporation asks permission to sell the common stock of the Bakersfield and Kern Electric Railway Company to V. N. Mickelberry under the terms and conditions of the agreement filed in such proceeding as Exhibit "A" of Exhibit No. 2.

The Bakersfield and Kern Electric Railway Company is a corporation organized and existing under and by virtue of the laws of the State of California. It is engaged in and is now, and for many years last past, has been, engaged in, and conducting the business of operating a street railway and bus lines as a common carrier of passengers in the City of Bakersfield and certain contiguous territory to said City of Bakersfield. It has outstanding \$250,000.00 (2,500 shares) of common capital stock, all of which is owned by the San Joaquin Light and Power Corporation. It was also, as of May 31, 1933, indebted to the San Joaquin Light and Power Corporation in the sum of \$248,139.25.

In Application No. 19065 Bakersfield and Kern Electric Railway Company asks permission to sell to the San Joaquin Light and Power Corporation the following described properties located in the City of Bakersfield:-

REAL PROPERTY:

Parcel 1:

Commencing at a point marking the intersection of the southerly line of 19th Street with the boundary line between Sections 29 and 30, Township 29 South, Range 28 East, M.D.B. & M., and running thence north 00 degrees 15.5 minutes east 298.1 feet to a point marking the intersection of the center line of Union Avenue with the southerly line of Grove Street, thence south 73 degrees 42.5 minutes east along said last mentioned line to its intersection with the prolonged center line of Sacramento Street, thence south 16 degrees 17.5 minutes west along said prolonged line to the intersection thereof with the southerly line of 19th Street, and thence south 87 degrees 48.5 minutes west along said last mentioned line to the point of beginning; excepting therefrom, however, and reserving (1) an easement in, over and along the most southerly 80.01 foot strip of said parcel (being the strip now called 19th Street) for the common use thereof by the City of Bakersfield and first party,

and their respective successors in estate, for highway purposes and the operation of a street railway, respectively, and (2) an easement in the City of Bakersfield for highway purposes in, over and along the most westerly 57.75 feet of said parcel extending from the northerly line of 19th Street to the southerly line of Grove Street (which said strip comprises the east half of Union Avenue).

Parcel 2:

Commencing at a point in the center line of Oak Street 23.72 feet south of the center line of 19th Street and running thence south along said first mentioned center line 1012.55 feet, thence south 76 degrees 31 minutes west 189.7 feet, thence south 44 degrees 56 minutes west 231.3 feet, thence west 439 feet, thence north 393 feet, thence north 41 degrees 10 minutes east 786.4 feet, thence north 48 degrees 41 minutes east 357.8 feet to the point of commencement, being a part of Section 26, Township 29 South, Range 27 East, and containing 13.9 acres, more or less.

Personal Property:

6 American Car Company of California double truck, 40 passenger seating capacity street railway cars, each equipped with two 50 HP motors;

8 American Car Company of California Birney safety single truck, 32 passenger seating capacity street railway cars, each equipped with two 25 HP motors;

The following automobile passenger buses, to-wit:

	<u>Make</u>	<u>Motor No.</u>	<u>Serial No.</u>
1	White	53040	92492
1	White	58235	102067
1	Studebaker	37249	2096267
1	Graham	G.B. 8378	E. 2679
1	Dodge	Z. 1942	9282527

The \$33,418.23 which the San Joaquin Light and Power Corporation has agreed to pay for said properties will be credited as a payment upon the amount of the indebtedness which Bakersfield and Kern Electric Railway Company owes San Joaquin Light and Power Corporation. After the purchase of said properties the San Joaquin Light and Power Corporation will lease to the Bakersfield

and Kern Electric Railway Company the personal property and parcel one of the real property. Under the terms of the lease filed in Application No. 19065 as Exhibit "C" the Bakersfield and Kern Electric Railway Company agrees to pay as rental for the properties the sum of two cents for each mile that said automobile buses and each of them shall be operated by the railway company as a common carrier of passengers and one quarter cent per mile for each mile that said street railway cars and each of them shall be operated by the railway company in its street railway business. The lessee must at its own cost and expense during the period of the lease keep and maintain in proper condition and repair all of the properties mentioned in the lease, and upon the termination of the lease, return the same to the lessor in as good condition as same are now in, reasonable wear and tear and damage by the elements excepted. The lease is to be in effect for a period of five years subject to the provision that the same may be renewed or extended for an additional term of five years by the Bakersfield and Kern Electric Railway Company giving to the San Joaquin Light and Power Corporation 60 days notice in advance of the expiration of the lease. The Bakersfield and Kern Electric Railway Company is also given the right to terminate the lease by giving the San Joaquin Light and Power Corporation written notice to that effect, such termination to be effective 60 days after receipt of such notice by the San Joaquin Light and Power Corporation.

In Application No. 19066 San Joaquin Light and Power Corporation, as stated, asks authority to sell the common capital stock of Bakersfield and Kern Electric Railway Company to V.N. Mickelberry.

Section 51 (b) of the Public Utilities Act, reads in part as follows:-

"No public utility shall hereafter purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under or by virtue of the laws of this state, without having been first authorized to do so by the commission. Every assignment, transfer, contract or agreement for assignment or transfer of any stock by or through any person or corporation to any corporation or otherwise in violation of any of the provisions of this section shall be void and of no effect and no such transfer shall be made on the books of any public utility."

The agreement (Exhibit No. 2) filed in Application No. 19066 defines the terms and conditions under which San Joaquin Light and Power Corporation, the present owner of the outstanding stock of Bakersfield and Kern Electric Railway Company, will sell such stock to V. N. Mickelberry. It does not appear to us that V. N. Mickelberry will become, or be, a public utility if he acquires said stock. The Bakersfield and Kern Electric Railway Company, so far as is disclosed by the application, will continue to operate the properties and function as a public utility. The Commission has heretofore held that it had no authority over the transfer of stock of public utilities unless such stock is being acquired by a public utility. It is our opinion that the Commission has no jurisdiction over the transfer of the stock referred to in Application No. 19066 and that therefore such application should be dismissed without prejudice.

#### ORDER

The Commission having been asked to enter its order as indicated in the foregoing opinion, and having considered the request of applicants and being of the opinion that there is no need for a public hearing on said applications, and that Application No. 19065 should be granted subject to the provisions of the

order herein and that Application No. 19066 should be dismissed without prejudice, therefore,

IT IS HEREBY ORDERED as follows:-

1. Bakersfield and Kern Electric Railway Company may sell to the San Joaquin Light and Power Corporation the properties described in Exhibit No. 1, filed in Application No. 19065, such sale to be made pursuant to the terms and conditions of the agreement filed in said Application No. 19065 as Exhibit No. 1.
2. San Joaquin Light and Power Corporation may lease to the Bakersfield and Kern Electric Railway Company the properties described in the lease agreement filed in Application No. 19065 as Exhibit "C" of Exhibit No. 1, said properties to be leased to the Bakersfield and Kern Electric Railway Company pursuant to the terms and conditions of said lease agreement.
3. Application No. 19066 is hereby dismissed without prejudice.
4. Within thirty (30) days after the execution of the lease agreement herein authorized, Bakersfield and Kern Electric Railway Company shall file with the Railroad Commission a certified copy of said lease agreement.
5. The authority herein granted will become effective twenty (20) days after the date hereof.

DATED at San Francisco, California, this 2<sup>d</sup> day of October

1933

C. C. Leary  
Leon A. Leary

W. H. A. Leary

M. B. Leary

Commissioners.