

Decision No. 28072

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
JAMES IRVINE, VICTOR ETIENNE, Jr.)
and W. H. SPAULDING as the bondholders)
protective committee of San Francisco,) Application No. 19937
Napa and Calistoga Railway for an or-)
der approving a plan of said committee)
for the reorganization of said railway.)

Earl & Hall, by Guy C. Earl, for applicant.

BY THE COMMISSION:

ORIGINAL

O P I N I O N

This application involves the refinancing of the properties formerly owned by the San Francisco, Napa and Calistoga Railway.

It is of record that the properties of said company were sold at foreclosure sale on January 16, 1935, and that the sale of the properties was on January 21, 1935 confirmed by the superior court of the State of California in and for Napa County. The properties were bought by James Irvine, Victor Etienne, Jr. and W. H. Spaulding, the bondholders protective committee.

The San Francisco, Napa and Calistoga Railway had outstanding \$337,000.00 of first mortgage 6% bonds due December 1, 1936 and \$599,100.00 of 6% debenture bonds due December 1, 1936. The company for a number of years past has been unable to pay the interest on its bonds and debentures. To protect the interests of the holders of the first mortgage bonds the aforesaid bondholders protective committee was organized. The committee prepared a reorganization plan and called upon the holders of the first mortgage bonds to deposit the same with the American Trust Company. Bonds in the amount of \$283,400.

were deposited. There were also deposited \$58,100.00 of debentures, the owners of which, in order to participate in the reorganization plan had to pay the American Trust Company \$5.00 per \$1,000. of debentures deposited.

The reorganization plan now before the Commission differs in some respects from the plan submitted to the holders of the bonds. The changes were made by the committee under the authority contained in the said plan.

The bondholders protective committee proposes to organize a new corporation to be known as the San Francisco and Napa Valley Railroad. This corporation will have an authorized stock issue of \$60,000.00 divided into 60,000 shares of \$1.00 each. The 60,000 shares of stock will consist of 30,000 shares of Class A and 30,000 shares of Class B stock. Except as required by law, the holders of Class B stock have no voting rights. The articles of incorporation authorize the directors of the corporation to levy assessments upon both the Class A and Class B shares. The proposed articles in this respect provide as follows:-

"The directors of this corporation are hereby granted power and authority to levy and collect from time to time, as in their discretion they may deem advisable, assessments upon said 'Class A' and 'Class B' shares of this corporation at any time issued and outstanding, and shall have and enjoy all of the rights and privileges with reference to such assessments as are fixed, provided and established by law in respect of corporations the directors of which have such power of assessment; provided, however, neither any assessment nor the levy thereof shall create any personal liability whatsoever of any shareholder of this corporation."

This provision of the articles of incorporation we think should be modified so as to provide that any assessment that may be levied shall apply to Class A shares and Class B shares uniformly and without any distinction as to said Class A shares and said Class B shares.

The Class A stock will be distributed to the holders of the \$283,400. of first mortgage bonds who have deposited their bonds under the reorganization plan, while the Class B stock will be distributed to the holders of debentures who have deposited debentures under said reorganization plan. The control of the company will therefore vest with

those who now own or did own the \$283,400. of first mortgage bonds. In addition to receiving the Class A stock said holders of first mortgage bonds will receive \$283,400. of 5% income bonds of the new company on a dollar for dollar basis. Resort is had to the issue of income bonds for two reasons, first, in the event the new company does not earn interest on the outstanding bonds it is under no obligation to pay the same and therefore it cannot be declared to be in default, for its failure to pay interest and, second, the issue of the income bonds preserves to the holders of the first mortgage bonds a lien upon the railway properties.

The trust indenture securing the payment of the income bonds provides for an authorized issue of \$400,000. The bonds are to be dated January 1, 1936 and are to mature July 1, 1956. They are to bear interest from and after June 1, 1936, such interest to be payable, if earned under the terms of the trust indenture, on January 1, 1937, on July 1, 1937 and on the first day of January and July of each year thereafter to July 1, 1956.

The indenture provides that the "income year" of the company shall begin December first of any year and end on November thirtieth of the following year. If the net income as hereafter defined for any year, is not sufficient to pay interest on the bonds at the rate of 5%, the company's liability to pay interest at the rate of 5% for such year terminates. In other words, the interest on the income bonds is not cumulative except interest not earned for the first six months of any income year accumulates and is a charge against the net income of the last six months of such year.

Section 3 of Article III of the trust indenture defines net income as follows:-

" The available net income (if any) of the Company from which the interest on the bonds for any six months as aforesaid is to be paid shall be the net income of the Company for the six months' period ending May 31st or November 30th next preceding, determined as follows: There shall be deducted from the gross income of the Company from all sources during such six months' period all expenses

incident to the operation and maintenance of the Company and its properties during such six months' period (fixed, in accordance with standard accounting practice) including therein reasonable and proper charges for current repairs and current maintenance and renewals of its plant and properties, rentals, license charges, taxes, assessments of every kind, insurance and reasonable and proper charges for depreciation fixed in accordance with standard accounting practice prescribed by the Interstate Commerce Commission and/or the Railroad Commission of California and also (if the Board of Directors of the Company shall by resolution so direct in and for any six months' period) a sum to be fixed by said Board, not to exceed \$10,000., to be used solely for the purpose of new construction, facilities, equipment and the like, and permanent additions, if in the opinion of the said Board (evidenced by a certified copy of a resolution of the Board furnished to said Trustee) such permanent additions and betterments are necessary to enable the Company properly to continue its operation and give proper service to the public and its patrons.

Whenever interest on said bonds shall have been declared by said Board to be due and payable as herein provided on any January 1 or July 1, such interest shall become due and payable on such date."

We think there should be eliminated from said Section 3 the proviso "Fixed, in accordance with standard accounting practices" and that there should be substituted therefor the following:- "Fixed, in accordance with the uniform system of accounts prescribed by the Interstate Commerce Commission and/or the Railroad Commission of California."

Of the \$400,000. of bonds authorized by the trust indenture \$283,400. may be executed by the company and authenticated by the trustee forthwith and delivered to the bondholders protective committee to enable it to pay in part for the properties formerly owned by the San Francisco Napa and Calistoga Railway. These bonds, as stated, will in turn be distributed to the holders of first mortgage bonds by such company. The remaining \$116,600. of bonds may not be issued without the consent in writing of the holders of at least 50% in the principal amount of the bonds then outstanding. We believe that the trust indenture in this regard should be modified so as to provide that none of said \$116,600. of bonds may be authenticated by the trustee unless and until there has been delivered to the trustee a certified copy of an order of the Railroad Commission of the State of California or other governmental body having jurisdiction, authorizing the issue of said bonds.

The trust indenture provides that all bonds must be registered with the trustee who is to act as registrar. For any transfer of a registered bond, the registrar may require the payment of a sum sufficient to reimburse it for any stamp tax or governmental charge connected therewith, and also the further sum of one dollar (\$1.00) for each bond so transferred. It seems to us that the one dollar (\$1.00) fee should be paid by the company and that the trust indenture should so provide.

We think the trust indenture should provide for the filing of a semi-annual net income statement with the trustee. Such statement should be available to the holders of bonds. If the statement is questioned by the trustee, or the holders of twenty-five percent. of the bonds, its correctness should be determined by a board of three competent persons; one appointed by the company, one by the trustee or the holders of bonds who question the correctness of the net income statement and a third selected by the aforementioned two.

The trust indenture should further be modified so as to require the trustee to use moneys deposited in the sinking fund to redeem bonds. The trustee's action in this regard should not be subject to a request by the company.

Article XII of the trust indenture empowers the company with the consent of the holders of two thirds of the bonds outstanding to change and modify any provision of said trust indenture. Because of the power given to the holders of bonds to change, among other things, the maturity date of the bonds or the rate of interest, we believe that the power to change the provisions of the trust indenture should be approved by the holders of not less than 76% of the outstanding bonds. Because of the conditions under which this company is operating, and the uncertainty of its income, we think it advisable that the company, with the consent of the holders of not less than 76% of the outstanding bonds, should have authority to modify provisions of the trust indenture.

The reorganization plan under which the bonds of the San Francisco Napa and Calistoga Railway Company have been deposited provides that a voting trust of all the shares of stock in Class A will be created and shall be binding on all the holders of the stock. The terms and conditions of the voting trust will be determined upon and fixed by the said bondholders committee. There has been filed in this proceeding a copy of the proposed voting trust. We do not think that the Commission has any authority over such voting trust and we therefore do not deem it advisable that the Commission approve or disapprove said voting trust.

During the past ten years the San Francisco Napa and Calistoga Railway and its subsidiary, Napa Valley Bus Company, have reported gross revenue, gross income before depreciation and interest, interest, depreciation and profit or loss as follows:-

Years: ended: 6/30	Gross Revenue	Gross income :before inter- :est and depre- : ciation	Interest	Depre- : cia- : tion, etc.	Profit : for : year	Loss : for : Year
1925	\$ 250,634.	\$ 83,989.	\$ 59,038.	\$20,387.	\$ 4,564.	-
1926	234,336.	61,235.	58,482.	20,886.	-	\$18,132.
1927	225,753.	57,696.	57,460.	20,892.	-	20,656.
1928	222,050.	52,475.	56,215.	21,267.	-	25,007.
1929	223,835.	41,987.	54,842.	21,129.	-	33,983.
1930	180,369.	28,924.	53,366.	20,705.	-	45,147.
1931	152,382.	13,810.	51,588.	20,697.	-	58,457.
1932	101,945.	1,159.*	50,175.	18,973.	-	68,309.
1933	97,635.	6,780.	50,175.	16,781.	-	60,176.
1934	88,938.	1,135.	50,175.	18,184.	-	67,224.
		*Loss				

Because of the fact that the new corporation has not yet been organized we cannot enter a final order in this matter. It is obvious that the corporation which seeks permission to issue bonds and stock should join in the application. This can be accomplished through the filing of a supplemental application. Attached to such application should be a certified copy of the articles of incorporation. The Commission should also be furnished with a revised trust indenture. If the

articles of incorporation and the trust indenture are modified as herein indicated, the Commission finds applicants' proposal satisfactory.

O R D E R

The Commission by its order of May 6, 1935 having set this application for public hearing on Friday, June 14th, and having directed a notice of said hearing to be published and a notice of said hearing to be mailed to the holders of bonds and debentures of San Francisco, Napa and Calistoga Railway who had deposited their bonds and debentures with the American Trust Company, depositary under the reorganization plan filed in this proceeding, and affidavits having been filed showing that said notices were published and mailed, as directed by the Commission, and a public hearing having been held by Examiner W. C. Fankhauser on said June 14th, and the Commission having considered the record in this application and being of the opinion that the reorganization plan, referred to in this application, if modified as indicated in the foregoing opinion is fair and reasonable, and that upon the filing of an appropriate supplemental application in this proceeding it should confer upon the several petitioners the authority necessary to execute and consummate said reorganization plan, and that until such supplemental application is filed, this matter be continued on the Commission's docket,

NOW, THEREFORE, IT IS HEREBY ORDERED that this application be continued on the Commission's docket to give applicants the opportunity to file the supplemental application referred to herein.

DATED at San Francisco, California, this 24th day of June, 1935.

Leon A. Williams

M. A. Chen

M. B. Chen

W. C. Fankhauser