

LEM

Decision No. 29096

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
LOS ANGELES RAILWAY CORPORATION  
and  
CITY RAILWAY COMPANY OF LOS ANGELES  
for an order authorizing the issuance  
and exchange of securities and for an  
order authorizing the transfer and  
sale of the properties of the City  
Railway Company of Los Angeles to Los  
Angeles Railway Corporation.

ORIGINAL

Application No. 20714

Gibson, Dunn & Crutcher, by Woodward M. Taylor  
and Homer D. Crotty, for applicants.  
Ray L. Chesebro, City Attorney, and Carl I.  
Wheat, Public Utilities Counsel, for City  
of Los Angeles.  
H. S. Payne, Secretary Board of Public Utilities  
and Transportation of the City of Los Angeles.  
Theo. K. Resmey, for Peoples Utility League,  
California Progressives and United Organizations  
for Progressive Political Action.

CARR, Commissioner:

OPINION

The application:

In this proceeding the Railroad Commission is asked to enter its order authorizing the Los Angeles Railway Corporation to issue \$9,000,000. of general mortgage 5% bonds dated October 1, 1936 and due October 1, 1971 to refund \$9,000,000. of outstanding bonds; to execute a trust indenture to secure the payment of the said bonds; to issue \$8,954,400. of 5% non-cumulative preferred stock to refund \$8,954,400. of unfunded debt and to authorize the transfer and sale of the properties of the City Railway Company of Los Angeles to the Los Angeles Railway Corporation.

Financial background:

The Los Angeles Railway Corporation which, with its wholly owned and controlled subsidiary corporations, performs an important local transportation service in the City of Los Angeles

and adjacent territory, is largely owned by what may for convenience be termed the Huntington interests. (1) Los Angeles Railway Corporation and owned and controlled subsidiaries have outstanding, excluding bonds in the sinking funds, \$15,870,000. of bonds, \$9,992,534.83 of current liabilities and \$25,000,000. of common stock. The Huntington interests own \$9,000,000. of the bonds, \$8,954,323.51 of the current liabilities and all of the \$20,000,000. of stock of the Los Angeles Railway Corporation, which in turn owns \$5,000,000. of stock of the City Railway Company. Bonds in the amount of \$6,845,000. and current liabilities in the amount of \$1,038,211. are held by persons other than the Huntington interests. The stock is in excess of any equity values in the property. (2) No dividends have been paid on it for many years. Because of low earnings and the approaching maturity of its bonds, the Los Angeles Railway Corporation has been handicapped in rendering a vital utility service in Los Angeles and raising new capital to meet urgent public demands for improved and extended service.

By this application it is sought to improve the financial structure of the utility so that it may escape from the consequences of impending default of underlying bond issues and to put itself in a better position to meet its public responsibility. To that end authority is asked to issue \$9,000,000. of new bonds, to be exchanged, however, for the \$9,000,000. of outstanding bonds now owned by the

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(1) Included in this designation are the Huntington Land and Improvement Company, Collis P. and Howard Huntington Memorial Hospital, the Henry E. Huntington Library and Art Gallery, Estate of Henry E. Huntington, deceased, trusts established under the will of Henry E. Huntington, deceased, and certain trusts created by Henry E. Huntington during his lifetime.

(2) A report of the Commission's engineering department of December 16, 1935, to which reference is made in the application, shows an undepreciated historical cost rate base on December 31, 1934 of approximately \$45,000,000. The same report as of the same date shows accrued depreciation of \$18,500,000. in round figures.

Huntington interests, the lien of which new bonds will be junior to that of the \$6,854,000. of bonds in the hands of the public and to issue \$8,954,400. of 5% non-cumulative preferred stock to be exchanged for the satisfaction of the floating indebtedness of the corporation payable to the Huntington interests in a similar amount. Provision is made that the bonds in the hands of the public, which are non-callable, can be refunded through the issue of first lien bonds. It is asserted that the bonds in the hands of the public will thus occupy such a preferred status that their refunding as they mature will not be a matter of particular difficulty. By these steps the annual cash requirement for interest and sinking fund payments will be lessened by about \$400,000. for several years. The plan contemplates that all the properties of City Railway Company of Los Angeles will be transferred to Los Angeles Railway Corporation and that the bonds and stock of the former will be cancelled. Such, in short, is the plan, authorization for the carrying out of which is here sought.

A public hearing was had on August 21st when the matter was submitted.

Relationship to other proceedings:

The plan and its general purpose and effect may not be disassociated from various proceedings, informal and formal, which have been had or are pending affecting the operations of the Los Angeles Railway Corporation. It is appropriate to make brief reference to these.

For about a year in 1933 and 1934 representatives of the Los Angeles Railway Corporation, the Pacific Electric Railway Company, the City of Los Angeles and the Staff of the Commission, met regularly in informal fashion to consider and work out the

innumerable local problems affecting transportation presented by a great and growing community like Los Angeles and served by two separately owned transportation systems. Representatives of quasi-public organizations interested in transportation problems also participated in these conferences. Some results were accomplished by these conferences, but they finally broke up, the City apparently feeling that the Los Angeles Railway Corporation either was unwilling to or was not in a position to meet the problems coming up for consideration.

On October 16, 1934 the City filed a complaint with the Commission against the Los Angeles Railway Corporation seeking an order requiring that utility to purchase new rail equipment. Some hearings were held on this complaint. During the course of the hearings an agreement was entered into between the utility and the City contemplating certain expenditures for new equipment. Under these circumstances, at the request of the parties, the case was dismissed. Controversies arose as to the meaning and effect of the agreement, no new rail equipment was purchased and on October 12, 1935 the City of Los Angeles filed its complaint (Case No. 4002) against both the Los Angeles Railway Corporation and the Pacific Electric Railway Company complaining of various service and equipment conditions and fares. Extensive hearings followed and the case was finally submitted for decision.

Public dissatisfaction over local transportation conditions in Los Angeles has been the occasion for many official investigations. Recommendations emanating from these various successive efforts were rather far reaching in character and went beyond any practical hope of realization. About the time of the institution

by the City of Los Angeles of the case referred to, the City requested the Commission, through its Engineering Department, to make still another investigation into transportation conditions in Los Angeles, offering if the request were granted to defray the cost thereof. This investigation was made under the supervision of J. H. Hunter, transportation engineer, with E. F. McNaughton, now Director of Research, in direct charge of the detailed study, assisted by A.C. Jenkins, assistant engineer. The results of this investigation are expressed in the report referred to in the instant application and by reference made a part of the record and which report depicts in simple and succinct fashion the historical development of local transportation in Los Angeles and outlines in very complete detail its present status. The report differs markedly from its various predecessors in that the recommendations made are sharply circumscribed by reality. Among the recommendations made, and perhaps the most important, was that the Los Angeles Railway Corporation should purchase a considerable number of modern up-to-date street cars. Certain recommendations were made as to rehabilitation of existing equipment, fare adjustments and service improvements, some of which have already been placed in effect.

The instant application may be said to represent, in part, at least an effort by the Los Angeles Railway Corporation to get itself in a position to meet, and to meet the recommendations made in the report referred to and to effect the improvements in service being urged by the City of Los Angeles. At the hearing in the instant case it developed that the Company had already placed an order for 60 new street cars, delivery of which it was stated would commence early in January, 1937, and proceed at the rate of two cars daily. Issues presented in Case 4002 respecting what may be termed, for lack of better expression "fare dislocations" may, it developed

at the instant hearing, best be attempted to be worked out by conferences between representatives of the present applicant, Los Angeles Railway Corporation, the Pacific Electric Railway Company, the City and the Commission. Both the City and the Company favored this course. Under the circumstances a decision in Case 4002 should be withheld pending the outcome of such conferences.

It is now appropriate to consider the details of the application, the granting of which is favored by the City.

The application in detail:

The following table shows the amount of bonds which applicants now have outstanding, the amount that will be refunded through the issue of \$9,000,000. of general mortgage 5% bonds due October 1, 1971 and the amount remaining outstanding:-

Name of Bond	Total	Amount to be re- funded	Amount not re- funded
Los Angeles Traction Co. 5s due 12/1/1938.....	\$ 250,000.	\$ -	\$ 250,000.
Los Angeles Railway Co. 5s due 10/1/1938.....	3,962,000.*	95,000.	3,842,000.
Los Angeles Railway Corp. 5s due 12/1/1940.....	8,845,000.	6,092,000.	2,753,000.
City Railway Co. of Los Angeles 5s, due 2/1/1941.....	2,813,000.	2,813,000.	-
Total.....	\$15,870,000.	\$9,000,000.	\$6,845,000.

\*\$25,000. bonds held by Los Angeles Railway Corporation.

In its proposed trust indenture Los Angeles Railway Corporation covenants and agrees that no bonds shall hereafter be issued or re-issued under the mortgage of Los Angeles Traction Company dated December 1, 1898, or under the mortgage of Los Angeles Railway Company dated January 17, 1899 or under the mortgage of Los Angeles Railway Corporation dated December 1, 1910.

The plan provides, on page 12, that the \$2,813,000. of bonds of City Railway Company of Los Angeles shall be cancelled. The \$95,000.

of bonds of Los Angeles Railway Company and the \$6,092,000. of bonds of Los Angeles Railway Corporation will be delivered to the trustee under the company's proposed mortgage and may be used to meet sinking fund payments to become due under the underlying mortgages. Upon the payment, extension, renewal or refunding of the bonds of Los Angeles Railway Company and of Los Angeles Railway Corporation held by the public, the bonds held by the trustee shall be cancelled.

The general mortgage bonds which the Los Angeles Railway Corporation asks permission to issue are callable upon any interest payment date in whole or in part, upon payment of the principal thereof, the accrued interest and a premium of 2%. The company covenants and agrees that commencing with March 1, 1937 and on or before the first day of March of each year thereafter until all the bonds have been paid and redeemed, it will deposit as and for a sinking fund with the trustee such an amount in cash not exceeding, however, in any one year, \$350,000., which amount shall be computed by taking from the gross earnings of the corporation from all sources, for the then preceding year, the following items:-

- (a) All operating expenses for such year.
- (b) Interest on the bonds secured by the trust indenture dated October 1, 1936, and interest, principal and sinking fund payments on underlying mortgages for such year (exclusive of the sinking fund required by the indenture dated November 21, 1910, and exclusive of the interest on the bonds of the Los Angeles Railway Corporation held by the trustee under subdivision (c) of Section 3 of Article II of the trust indenture dated October 1, 1936) and interest and amortization charges on other obligations not otherwise included under operating expenses for such year.
- (c) Taxes of all kinds not otherwise included under operating expenses for such year.
- (d) Full depreciation for such year at such rates as shall be determined from time to time by the Board of Directors of Los Angeles Railway Corporation, which rates of depreciation shall not exceed the rates of depreciation commonly allowed by the Railroad Commission of the State of California on the classes of property so depreciated.

The Los Angeles Railway Corporation is entitled to a credit on said sinking fund in the full amount by which capital expenditures actually made by it during such year for new street cars, motor coaches, other equipment and other capital charges, exceeds the amount of said depreciation for such year computed under paragraph (d) above.

The sinking fund payment shall not in any one year exceed \$350,000. The payments shall not be cumulative. The indenture, however, further provides that until the principal amount of the bonds issued thereunder shall be reduced to a total sum of \$5,400,000. the company covenants and agrees that it will deposit with the trustee as an additional sinking fund a sum in cash equal to such sum as may be declared and paid in dividends in cash on any shares of capital stock. Such payments shall be made to the trustee simultaneously with the dividend payments made by the corporation to its stockholders.

In the trust indenture the Los Angeles Railway Corporation covenants and agrees that it will not declare or pay any dividends on any of its capital stock except out of its surplus earnings remaining on hand after deducting all operating expenses including depreciation and fixed charges, including in such operating expenses, reasonable expenditures for maintenance and renewals and all sinking fund obligations. Under the stipulation offered at the hearing dividends may be declared and paid only out of future earned surplus.

Upon the refunding of the aforesaid bonds the Los Angeles Railway Corporation will have outstanding in the hands of the public \$6,845,000. of bonds consisting of the following:-

- \$2,753,000. par value Los Angeles Railway Corporation first and refunding mortgage 5% bonds due December 1, 1940.
- \$3,842,000. par value Los Angeles Railway Company first mortgage 5% bonds due October 1, 1938.
- \$250,000. par value Los Angeles Traction Company first consolidated mortgage 5% bonds due December 1, 1938.



The Los Angeles Railway Corporation in its proposed general mortgage covenants and agrees that no prior lien shall be placed upon the properties securing the payment of the general mortgage bonds except for (a) the purpose of paying, extending, renewing or refunding any or all of the underlying mortgages or any part thereof, provided, however, that the total amount of any lien permitted under Section 13 of Article III of said general mortgage shall not exceed a principal amount in excess of the bonds being paid, extended, renewed or refunded, plus an amount equivalent to underwriting discount or bankers' commissions and selling expenses not to exceed in any case 10% of the amount of said bonds; or (b) purchase money mortgages and purchase money liens on properties hereafter acquired; or (c) equipment trust certificates or other equipment obligations on the purchase of street cars, motor coaches, and all other types of street railway equipment, being liens on the property so purchased.

The unfunded debt of the Los Angeles Railway Corporation due the Huntington interests in the amount of \$8,954,323.51 will be refunded through the issue of \$8,954,400. of 5% noncumulative preferred stock. The preferred shares shall be subject, at the option of the Board of Directors, to redemption at any time on thirty days notice after their date of issuance at the price of \$102. per share and a sum equal to the declared and unpaid dividends.

The proposed refinancing of some of the company's indebtedness, outlined herein, should be of advantage to the company in that some of its indebtedness will be converted into a noncumulative preferred stock and some into a general mortgage callable bond issue. The company's outstanding bonds at this time are noncallable. While the first mortgage which it is contemplated will eventually

be executed for the purpose of refunding the underlying bonds, will be a closed mortgage, nevertheless the first mortgage bonds as well as the general mortgage bonds, will be callable. Under the plan, earnings that must now be used for sinking fund purposes, will be available for capital expenditures.

It seems to me that applicant Los Angeles Railway Corporation should give consideration to bring its stock issue in line with the equity in its properties and restate its corporate records so that they will more nearly be in conformity with the actual investment in the properties, a course which applicants indicated is under consideration.

The proposed trust indenture (Exhibit D draft August 20, 1936) of Los Angeles Railway Corporation, filed on August 21, 1936, is in satisfactory form. It should be understood, however, that any amendments or modifications of such trust indenture may not be executed without the approval of the Commission.

I herewith submit the following form of order:-

#### O R D E R

The Commission having been asked to enter its order, as indicated in the foregoing opinion, and having considered applicants' request and being of the opinion that the money, property or labor to be procured or paid for by Los Angeles Railway Corporation through the issue of \$9,000,000. of general mortgage bonds and through the issue of not exceeding \$8,954,400. of 5% noncumulative preferred stock, is reasonably required by Los Angeles Railway Corporation for the purposes herein stated and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expenses or to income and that this application should be granted, as

herein provided, therefore,

IT IS HEREBY ORDERED as follows:-

1. City Railway Company of Los Angeles may, after the effective date hereof and prior to December 31, 1936, transfer and sell all of its properties to the Los Angeles Railway Corporation.

2. Los Angeles Railway Corporation may, after the effective date hereof and prior to December 31, 1936, execute a trust indenture substantially in the same form as the trust indenture filed in this proceeding as Exhibit D. (Draft August 20, 1936, filed August 21, 1936) provided that the authority herein given to execute such trust indenture is for the purpose of this proceeding only, and is given only insofar as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said trust indenture as to such other legal requirements to which it may be subject; and provided further that said trust indenture may not hereafter be amended or modified except as authorized by the Railroad Commission.

3. Los Angeles Railway Corporation may, after the effective date hereof and prior to December 31, 1936, issue at not less than the par value thereof, \$9,000,000. of its general mortgage 5% bonds dated October 1, 1936 and due October 1, 1971, for the purpose of refunding the following bonds:-

Los Angeles Railway Company first mortgage 5% bonds due	
October 1, 1938 .....	\$ 95,000.
City Railway Company of Los Angeles first mortgage 5%	
bonds due February 1, 1941 .....	2,813,000.
Los Angeles Railway Corporation first and refunding	
mortgage 5% bonds due December 1, 1940 .....	6,092,000.

4. Los Angeles Railway Corporation may, after the effective date hereof and prior to December 31, 1936, issue at not less than its

par value, \$8,954,400. par value of noncumulative 5% preferred stock for the purpose of refunding the indebtedness payable to the Huntington Estate and affiliated interests mentioned in this application.

5. The authority herein granted will become effective when Los Angeles Railway Corporation has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is Five Thousand(\$5,000.) Dollars, and when Los Angeles Railway Corporation has filed a stipulation duly authorized by its Board of Directors in which it agrees that it, its successors and assigns, will not declare and pay any dividend on any class of its outstanding stock, except out of earned surplus arising hereafter.

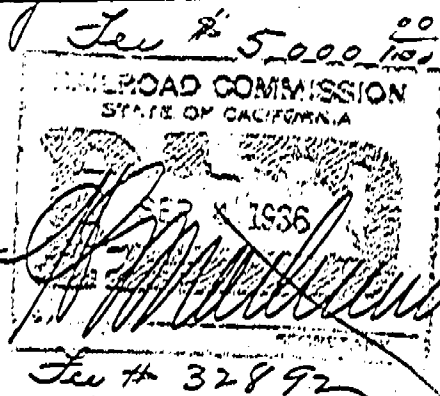
6. Los Angeles Railway Corporation shall file with the Railroad Commission within thirty(30) days after the execution of the aforesaid trust indenture two certified copies of said trust indenture.

7. Within thirty(30) days after the issue of said \$9,000,000. of bonds and said \$8,954,400. of preferred stock, or after the issue of any of said bonds, or any of said stock, Los Angeles Railway Corporation shall file with the Railroad Commission a report or reports such as are required by the Railroad Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.

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 31st day of

August, 1936.



M. B. Harris  
Leon A. Wiley  
W. A. Linn  
W. H. A. Linn  
Frank R. Linn  
Commissioners.