

Decision No. 23586

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
LOS ANGELES RAILWAY CORPORATION  
for an order pursuant to Section 52  
of the Public Utilities Act author-  
izing the issuance (if the same be  
deemed an issuance) and/or the guar-  
anteeing of \$750,000.00 principal  
amount 8-year serial 5% Series A  
Los Angeles Railway Equipment Trust  
Certificates.

ORIGINAL

Application No. 21030

Gibson, Dunn & Crutcher, by J.C. McFarland  
and Woodward M. Taylor, for applicant.

BY THE COMMISSION:

O P I N I O N

Los Angeles Railway Corporation asks the Commission to enter its order authorizing it to issue, if the same be deemed an issuance, or to guarantee the payment of \$750,000.00 of 5% serial equipment trust certificates. The proceeds realized from the sale of the certificates will be used to pay in part the cost of sixty new modern street-cars of the type commonly referred to in the industry as President's conference Committee cars.

Los Angeles Railway Corporation had outstanding on December 31, 1936 stocks and bonds as follows:-

Common stock . . . . .	\$20,000,000.
Preferred stock, non-cumulative 5% . . . . .	9,000,000.
Bonds . . . . .	15,860,000.

The outstanding bonds consisted of \$250,000. of Los Angeles Traction Company first consolidated mortgage 5% bonds due December 1, 1938; \$3,867,000. of Los Angeles Railway Company first mortgage 5% bonds due October 1, 1938; \$2,743,000. of Los Angeles Railway Corporation first and refunding mortgage 5% bonds due December 1, 1940, and \$9,000,000. of Los Angeles Railway Corporation general mortgage 5%

bonds due December 1, 1971. As of December 31, 1936 the company reports no notes payable. Its current liabilities are reported at \$809,745.67 and its current assets at \$1,585,035.86.

It is of record that on August 14, 1936 applicant placed an order with the St. Louis Car Company of St. Louis, Missouri, for the purchase of sixty President's Conference type streetcars. That applicant has need for the new streetcars has been definitely established in other proceedings before the Commission. The testimony shows that at the time applicant placed its order for the new cars it reserved the right to pay cash for such cars or to pay the builder 15% of the contract price in cash and the balance in three years with interest at the rate of 5% per annum on the balance due on the contract price. Applicant has since concluded to pay the builder in cash. About 25% of the required cash will be taken from the company's treasury and 75% obtained through the sale of 5% equipment trust certificates.

Applicant's program calls for the transfer of the title to the said sixty cars to the California Trust Company as trustee and the lease of the cars by the trustee to the Los Angeles Railway Corporation. The trustee will issue \$750,000.00 face value of Los Angeles Railway Equipment Trust Series A certificates, maturing serially over a period of eight years bearing dividends at the rate of 5% per annum. The certificates will be issued under an agreement, a copy of which is filed in this proceeding as Exhibit No. 3. The payment of the certificates, as well as the payment of the semi-annual dividend, will be guaranteed by the Los Angeles Railway Corporation. The form of the guarantee reads as follows:-

"Los Angeles Railway Corporation, for a valuable consideration, hereby unconditionally guarantees to the bearer or registered owner of the within certificate the prompt payment of One Thousand Dollars (\$1,000.00), being the principal of said certificate, when the same shall become due and payable, whether at the maturity thereof or by declaration or otherwise, and of dividends thereon at the rate of five per cent. (5%) per annum on the semi-annual dates mentioned in said certificate and in the dividend warrants thereunto attached, all in such coin or currency of the United States of America as at the time of payment is legal tender for public and private debts."

As stated, the sixty cars will be leased to the Los Angeles Railway Corporation. A copy of the proposed lease has been filed in this proceeding as Exhibit No. 4. Under the terms of the lease the Los Angeles Railway Corporation agrees to keep the equipment insured adequately against loss or damage by fire and to maintain the equipment in good operating condition. It agrees to pay as rent for the equipment an amount sufficient to pay the following items as they become due and payable:-

" (a) From time to time, as and when any of the trust equipment shall be delivered to the Company, amounts in cash equal to the difference in the cost of the trust equipment so delivered as certified to the Trustee by the President, or a Vice-President, and the Treasurer, or an Assistant Treasurer, of the Company, and the principal amount of trust certificates issuable in respect thereof as provided in Section 2 of Article First of said agreement, provided that the aggregate of all amounts so paid to the Trustee shall never be less than Twenty-five Per Cent (25%) of the cost of all the trust equipment which shall then be and theretofore have been delivered hereunder.

(b) If the aggregate cost of all the trust equipment which shall then be and theretofore have been delivered hereunder should exceed One Million Dollars (\$1,000,000.), an amount which with all other payments previously made under this clause(b) shall equal such excess.

(c) The necessary and reasonable expenses of the trust, including all expenses connected with the trust equipment and this lease thereof, and with the preparation, issuance, and sale of the trust certificates.

(d) Any and all taxes, assessments and other governmental charges upon the income or property of the trust or said agreement evidencing the same which the Trustee under said agreement may be required to pay, and any and all taxes, assessments and other governmental charges (other than Federal and State of California income taxes), which the Company or the Trustee may be required to pay or to retain from the principal of the trust certificates issued as provided in said agreement (herein called the trust certificates), or from the dividends thereon under any present or future law of the United States of America or of the State of California.

(e) On the 15th day of July, 1937, and on the 15th day of each January and July thereafter until the principal of the trust certificates and the dividend warrants attached thereto have been finally paid, the dividend warrants attached to the trust certificates becoming due on the next first day of August and the first day of February, as the case may be, and in the case of the issue of temporary trust certificates, on the 15th day of July, 1937, and on the 15th day of each January and July thereafter, the dividends payable thereon on the next first day of August and the first day of February, as the case may be; also a sum equal to accrued dividends at the warrant rate, from the due date, upon the amount of any installments of rent payable under this paragraph(e) and the following paragraph(f) which shall not be paid when due.

(f) The principal of the trust certificates when and as the same shall become payable, whether by declaration or upon the respective dates of maturity thereof, to-wit:

<u>PAR VALUE</u>	<u>MATURITY</u>	<u>PAR VALUE</u>	<u>MATURITY</u>
\$ 60,000.	Aug. 1, 1937	\$ 45,000.	Feb. 1, 1942
60,000.	Feb. 1, 1938	40,000.	Aug. 1, 1942
60,000.	Aug. 1, 1938	40,000.	Feb. 1, 1943
60,000.	Feb. 1, 1939	35,000.	Aug. 1, 1943
55,000.	Aug. 1, 1939	35,000.	Feb. 1, 1944
55,000.	Feb. 1, 1940	30,000.	Aug. 1, 1944
50,000.	Aug. 1, 1940	30,000.	Feb. 1, 1945
50,000.	Feb. 1, 1941		
45,000.	Aug. 1, 1941	<u>\$750,000.</u>	

The Company shall not be required, however, to pay any tax, assessment or other governmental charge so long as the Company shall in good faith and by appropriate legal proceedings contest the validity thereof, unless thereby, in the judgment of the Trustee, the rights or interests of the Trustee or of the trust certificate holders may be materially endangered; provided that nothing herein shall qualify or affect the right of the trust certificate holders to receive full and punctual payment of both dividends and principal without deduction for such taxes, assessments or other governmental charges to the extent provided in subdivision (d) of this Article First.

All rentals payable hereunder shall be payable at the principal office of the Trustee in the City of Los Angeles, State of California, in such coin or currency of the United States of America as at the time of payment is legal tender for public and private debts. "

Upon the payment of all of the equipment trust certificates the title to the equipment will pass to the Los Angeles Railway Corporation.

It is of record that the equipment trust certificates will be sold only to bona fide residents of California. If this is done, it is not necessary to file a registration statement with the Securities and Exchange Commission. While applicant through the filing of a registration statement could dispose of the certificates in a wider market and we believe at a lower interest rate, the cost of preparing and filing a registration statement might offset any saving in annual interest charges. The testimony shows that applicant's representatives have to date not been able to obtain commitments for all of the certificates. It, however, has funds on hand to acquire any certificates

not sold by its representatives.

In our opinion the equipment trust certificates do not constitute an issue of an evidence of indebtedness by the Los Angeles Railway Corporation. However, under the terms of the agreements filed as Exhibits 3 and 4, it becomes liable for the payment of the same as a guarantor and as lessee. We therefore believe that in view of the language in Section 52-1/2 of the Public Utilities Act, it should be authorized to execute the agreements filed in this proceeding as Exhibits Nos. 3 and 4.

O R D E R

The Commission having been asked to enter its order as indicated in the foregoing opinion, a public hearing having been held before Examiner Fankhauser and the Commission having considered the testimony submitted and being of the opinion that this application should be granted as herein provided, therefore,

IT IS HEREBY ORDERED that the Los Angeles Railway Corporation be, and it is hereby, authorized to execute on or before June 1, 1937, an agreement substantially in the same form as the agreement filed in this proceeding as Exhibit No. 3, and an agreement substantially in the same form as the agreement filed in this proceeding as Exhibit No. 4, provided that the authority herein granted to execute said agreements is for the purpose of this proceeding only and is granted only insofar as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of said agreements as to such other legal requirements to which said agreements may be subject.

IT IS HEREBY FURTHER ORDERED that within thirty(30) days after the execution of said agreements Los Angeles Railway Corporation shall file with the Commission two certified copies of each of the agreements as executed.

IT IS HEREBY FURTHER ORDERED that within ninety(90) days after the date of this order, Los Angeles Railway Corporation shall file with the Commission a report showing the face amount of equipment trust certificates, the payment of which it has actually guaranteed, and the cost of the equipment leased under the terms of the agreement filed in this proceeding as Exhibit No. 4.

DATED at San Francisco, California, this 5<sup>th</sup> day of March, 1937.

William H. Hall  
Leon C. Hill  
Frank R. Allen  
Raymond W. King  
Ray L. Allen  
Commissioners.