

Decision No. 31153

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the
LOS ANGELES RAILWAY CORPORATION
for an order pursuant to Section 52 of
the Public Utilities Act (a) authorizing
the issuance of \$6,860,000.00 principal
amount of First Mortgage Refunding 5%
Bonds in exchange for an equivalent prin-
cipal amount of bonds secured by under-
lying mortgages, bond for bond, and deposit
receipts therefor in connection with said
exchange, pursuant to a Plan and Agreement
of Exchange; (b) authorizing the modifica-
tions of the General Mortgage 5% Bonds and
the indenture securing the same by the ex-
ecution of a supplemental trust indenture;
and (c) approving the fairness of the terms
and conditions of such issue, exchange, and
modifications.

ORIGINAL

Application No. 22058

APPEARANCES

Gibson, Dunn & Crutcher, by S. M. Haskins, Homer D.
Crotty, Woodward M. Taylor and E.H. Conley,
for applicant.
Ray L. Chesebro, City Attorney of Los Angeles,
by John W. Holmes, Deputy City Attorney of the
City of Los Angeles, interested party.
J. H. Wolfe, for Venice Blvd. Committee of
1000 and Bay District Property Owners Asso-
ciation, interested parties.
Wm. Green, for Clydia A. Gore, an interested party.

WAKEFIELD, Commissioner:

OPINION

This application involves the issue of \$6,860,000. of first
mortgage refunding 5% bonds to refund the following bonds:-

Los Angeles Railway Company first mortgage 5% gold bonds due October 1, 1938	\$ 3,867,000.
Los Angeles Traction Company first consolidated mortgage 5% gold bonds due December 1, 1938	250,000.
Los Angeles Railway Corporation first and refunding mortgage 5% gold bonds due December 1, 1940	<u>2,743,000.</u>
Total.....	\$ <u>6,860,000.</u>

The Commission by its order of June 30, 1938 set the above entitled matter for public hearing before Commissioner Wakefield for Thursday, July 26, 1938. By the same order it directed applicant to mail to all known holders of said bonds and publish a notice of said hearing. A copy of said notice is attached to said order of June 30, 1938 as Exhibit A. The hearing was had on said July 26th, at which time applicant filed an affidavit showing that it had mailed and published said notice, as directed by the Commission. At said hearing all persons interested in the refunding of said bonds were accorded the opportunity to be heard.

The company's plan and agreement of exchange is filed in this proceeding as Exhibit 12. It may be summarized as follows:-

- (a) The holders of the aforesaid bonds will be asked to deposit their bonds with Security-First National Bank of Los Angeles or with Bank of America, National Trust and Savings Association who will issue to them deposit receipts, similar in form to the deposit receipts filed in this proceeding as Exhibits 9 or 10 or 11.
- (b) If the plan becomes effective the holders of deposit receipts (Exhibit 9) representing Los Angeles Railway Company first mortgage 5% gold bonds due October 1, 1938, and the holders of deposit receipts (Exhibit 10) representing Los Angeles Traction Company first consolidated 5% gold bonds or the holders of said bonds, will upon the surrender of said deposit receipts or said bonds receive, on a par for par basis, Los Angeles Railway Corporation Series A, first mortgage refunding 5% bonds, dated October 1, 1938 and due October 1, 1948. The holders of deposit receipts (Exhibit 11) representing Los Angeles Railway Corporation first and refunding mortgage 5% gold bonds due October 1, 1940, or the holders of said

bonds will, upon the surrender of said deposit receipts or said bonds, receive on a par for par basis, Los Angeles Railway Corporation, Series B, first mortgage refunding 5% bonds dated October 1, 1938 and due October 1, 1950. Series A and Series B bonds will be issued under a trust indenture which limits the issue of Series A bonds to \$4,117,000.; of the Series B bonds to \$2,743,000.; and the total to \$6,860,000. The trust indenture will be a first lien on all the property now or hereafter owned by the company and a first lien on the company's equity in equipment being purchased through the issue of equipment trust certificates or other forms of indebtedness. A copy of the trust indenture is filed in this proceeding as Exhibit 7.

- (c) After the issue of said bonds and until a change is approved by the company, the trustee, and the holders of at least two thirds of the outstanding bonds, the company must deposit with the trustee \$400,000. on August 1, 1939, and the sum of \$200,000. on each first day of February and first day of August in each year thereafter to and including August 1, 1950. Until October 1, 1948 seventy per cent (70%) of said cash deposits and seventy per cent (70%) of all other amounts paid into the sinking fund under the provisions of the trust indenture shall be used to purchase, redeem or retire Series A bonds. Until October 1, 1948 the remainder of the moneys in the sinking fund, to-wit: thirty per cent (30%) shall be used to purchase, redeem or retire Series B bonds. All moneys paid into the sinking fund after October 1, 1948 shall be used to purchase, redeem or retire Series B bonds.
- (d) The company may redeem at its option all of said Series A and Series B bonds outstanding, upon any interest payment date by paying the principal thereof plus a premium of one per cent on the principal thereof. If bonds are called to invest sink-

ing fund moneys, they are redeemable at their face value.

(e) The holders of the company's \$9,000,000. general mortgage 5% bonds dated December 1, 1936 and due December 1, 1971, the payment of which bonds is secured by a trust indenture which is a second lien on applicant's properties, have given their consent or will give their consent, to modify the terms of said trust indenture, so that, among other things, the 5% interest accruing on said bonds need not be paid unless earned. The interest due and payable semi-annually on said bonds shall be computed by taking from the gross earnings of the company from all sources for the then preceding interest period the following:-

(a) All operating expenses for such period, as such operating expenses may be defined in the accounting rules from time to time in force of the Railroad Commission of the State of California or other analogous authority having jurisdiction in the premises (exclusive of depreciation);

(b) Interest payments on underlying mortgages for such interest period, and interest charges on all other indebtedness;

(c) Taxes of all kinds not otherwise included under operating expenses for such interest period;

(d) An amount equal to full depreciation for such interest period at rates of depreciation computed in accordance with sound engineering and accounting practice, which rates of depreciation shall be certified by a firm of public accountants of national reputation as reasonable and adequate provision for depreciation of the depreciable properties of the Corporation. (The Corporation agrees that the accounts of the Corporation will be audited annually by a firm of certified public accountants of national reputation). Said rates of depreciation, however, shall not exceed the rates of depreciation commonly allowed by the Railroad Commission of the State of California on classes of property so depreciated.

The interest on said general mortgage bonds is limited to 5% per annum and is cumulative from and after June 1, 1938. Said accumulated interest can be paid only from net income and not from money appropriated for depreciation purposes.

A copy of the supplemental trust indenture is filed in this proceeding as Exhibit 8.

- (f) The Huntington Land and Improvement Company, Henry E. Huntington Library and Art Gallery, Collis P. and Howard Huntington Memorial Hospital and Security-First National Bank of Los Angeles, as trustee under the last will and testament of Henry E. Huntington, deceased, jointly and severally agree to purchase a total of not to exceed \$360,000. face value of Series A and not to exceed \$240,000. face value of Series B bonds, if they can be acquired, within a period of three years from the date said bonds are issued at a price not in excess of 95% of the principal amount thereof. They are not obligated to acquire more than \$120,000. of Series A bonds and not more than \$80,000. of Series B bonds in any one year. If the said bonds cannot be acquired within three years after their issue, the time of purchase is extended two years. Said purchasers now hold \$215,000. of Los Angeles Railway Company bonds due October 1, 1938 and \$147,000. of Los Angeles Railway Corporation bonds due December 1, 1940, or a total of \$362,000. They agree to deposit said bonds under the refunding plan. They further agree that the new bonds received in exchange therefor and said \$600,000. of bonds they agree to purchase will be held by them for a period of five years from their date of issue as to the said \$362,000. of bonds, and the date of acquisition as to the \$600,000. of bonds, except they may tender them to the sinking fund when ~~tenders~~ ^{bonds} are called by the trustee, or sell them upon condition that the transferee agrees to hold them during the five year period. 117M

A copy of the purchase agreement is filed in this proceeding as Exhibit 13.

Los Angeles Railway Corporation as of June 30, 1938 reports
in Exhibit 2 its assets and liabilities as follows:-

A S S E T S

<u>INVESTMENTS:</u>		\$47,965,107.26
Road and equipment	\$47,701,642.96	
Sinking funds	50,000.00	
Notes	180,000.00	
Bonds	28,957.20	
Deposit in lieu of property sold	4,507.10	
<u>CURRENT ASSETS:</u>		\$ 1,419,682.30
Cash	\$ 744,070.18	
Loans and notes receivable	5,000.00	
Accounts receivable	87,689.10	
Material and supplies	560,825.52	
Other current assets	22,097.50	
<u>UNADJUSTED DEBITS:</u>		\$ 131,393.93
Prepaid insurance	\$ 30,548.38	
Prepaid taxes	19,858.14	
Other unadjusted debits	80,987.41	
Total assets.....		<u>\$49,516,183.49</u>

L I A B I L I T I E S

<u>CAPITAL STOCK:</u>		\$10,954,400.00
Common	\$ 2,000,000.00	
Preferred	8,954,400.00	
<u>FUNDED DEBT UNMATURED:</u>		\$16,970,680.01
Los Angeles Railway Company 5% gold bonds due October 1, 1938	\$ 3,867,000.00	
Los Angeles Traction Company 5% gold bonds due December 1, 1938	250,000.00	
Los Angeles Railway Corporation 5% gold bonds due December 1, 1940	2,743,000.00	
Los Angeles Railway Corporation 5% bonds due December 1, 1971	9,000,000.00	
Trust certificates	630,000.00	
Equipment obligations	480,680.01	
<u>CURRENT LIABILITIES:</u>		\$ 783,843.84
Loans and notes payable	\$ 24,997.70	
Audited accounts & wages payable	527,350.93	
Accrued interest	98,308.33	
Tax liability	131,800.80	
Other current liabilities	1,386.08	
<u>UNADJUSTED CREDITS:</u>		\$18,838,295.79
Accrued depreciation	\$18,716,213.88	
Unredeemed tokens	117,934.25	
Other unadjusted credits	4,147.66	
<u>CORPORATE SURPLUS:</u>		\$ 1,968,963.85
Funded debt retired thru surplus	\$ 3,345,000.00	
Sinking fund reserves	6,094,935.56	
Total appropriated surplus	9,439,935.56	
Profit and loss (Red)	7,470,971.71	
Total liabilities.....		<u>\$49,516,183.49</u>

The \$2,000,000. of common stock is represented by 200,000 no par shares. They are all owned by Security-First National Bank of Los Angeles, as trustee under certain trusts created under the will of the late Henry E. Huntington, deceased.

The \$8,954,400. of preferred stock is represented by 89,544 shares of preferred stock of the par value of \$100. per share. About 79.6% of the preferred stock is owned by Security-First National Bank of Los Angeles, as trustee under certain trusts created under the will of the late Henry E. Huntington, deceased, and the remaining 20.4% of said preferred stock is owned by Huntington Land and Improvement Company.

The \$9,000,000. of general mortgage bonds due in 1971 are owned by the following:-

Henry E. Huntington Library and Art Gallery	\$3,822,000.
Collis P. and Howard Huntington Memorial Hospital	600,000.
Huntington Land and Improvement Co.	93,000.
Security-First National Bank as trustee under various trusts	4,285,000.
Citizens National Bank as trustee under various trusts	200,000.
<i>Trust and Savings Total</i>	<u>\$9,000,000.</u>

The company for 1936 and 1937 reports its income available for depreciation and interest as follows:-

Item	1936	1937
Total income for depreciation and interest	\$2,252,000.	\$2,020,000.
Less amount appropriated for depreciation	<u>1,338,000.</u>	<u>1,315,000.</u>
Amount available for interest	<u>\$ 914,000.</u>	<u>\$ 705,000.</u>

The income appropriated for depreciation cannot be used to pay accumulated or any other interest.

The record shows that the Los Angeles Railway Corporation has not sufficient funds on hand to pay the \$4,117,000. of bonds maturing this year. Its efforts to borrow money to pay said bonds and the \$2,743,000. of bonds due in 1940 have been unsuccessful. It has therefore concluded to ask the holders of said \$6,860,000. of bonds to continue their investment in its properties and accept on a bond for bond basis, said Series A and said Series B bonds in payment for the bonds they now own.

I appreciate that the holders of the underlying bonds possess certain legal rights under the trust indentures securing the payment

of their bonds. It is, of course, for them to determine whether they can realize more by exercising those legal rights in a possible bankruptcy proceeding than by accepting the plan of exchange proposed by the company. In my opinion the plan proposed by the company is eminently fair to the bondholders. It imposes no expense upon them whatsoever. It assures them the same income they have enjoyed and the payment of their bonds at par if they are redeemed through the use of sinking fund moneys. If, for any reason the company is declared in^{de-}fault under the new trust indenture, the litigation ensuing should be much less expensive than litigation that might now be precipitated by three different groups of bondholders.

The company has employed William R. Staats Co., Blyth & Co., Inc., Dean Witter & Co. and Bennett, Richards & Hill to solicit the deposit of the underlying bonds. A copy of the agreement between the company and the investment banking group is filed in this proceeding as Exhibit 14. In the agreement as now drafted, the company agrees to pay all fees for legal services of counsel of the investment banking group. The agreement should in my opinion be amended so that the company need not pay more than \$7,500. of the legal fees of counsel for the investment banking group.

Section 16 of Article III of the proposed trust indenture securing the payment of said Series A and Series B bonds, provides that if the company and the trustee cannot agree on the appointment of an engineer to determine whether the company is properly maintaining its property, such engineer shall be appointed by the Railroad Commission of the State of California. Inasmuch as conditions may arise which make it inadvisable for the Commission to make the appointment, the said section should be amended to meet such a contingency.

I recommend the following form of order:-

O R D E R

The Los Angeles Railway Corporation having asked permission to issue \$6,860,000. of first mortgage refunding five per cent bonds in exchange for an equivalent principal amount of bonds secured by underlying mortgages, bond for bond, and deposit receipts therefor in

connection with said exchange, to execute a trust indenture to secure the payment of said \$6,860,000. of bonds; to modify its general mortgage five per cent bonds and the trust indenture securing the same by executing a supplemental trust indenture, and having asked the Commission to approve the fairness of the terms and conditions of the exchange of bonds referred to in the foregoing opinion, a public hearing having been held by me on July 26, 1938, after due notice thereof, and having considered the evidence submitted at such hearing, I find that the plan and agreement of exchange filed in this proceeding as Exhibit 13, if modified as indicated in the foregoing opinion and in this order, is fair as to the terms and conditions of the issue, exchange and modifications of the bonds and the issue of deposit receipts referred to in said foregoing opinion; that the money, property or labor to be procured or paid for by the issue of said \$6,860,000. of bonds is reasonably required for the purposes herein stated, and that the expenditures for said purposes are not in whole or in part reasonably chargeable to operating expenses or to income, therefore,

IT IS HEREBY ORDERED as follows:-

(1) Los Angeles Railway Corporation may, after the effective date hereof and prior to December 1, 1940, issue \$4,117,000. face amount of first mortgage refunding five per cent bonds, Series A, dated October 1, 1938 due October 1, 1948, in exchange for an equivalent face amount of bonds secured by the trust indenture of Los Angeles Traction Company, dated December 1, 1898, and by the trust indenture of Los Angeles Railway Company, dated January 17, 1899, said exchange to be on a basis of bond for bond.

(2) Los Angeles Railway Corporation may, after the effective date hereof and prior to December 1, 1940 issue \$2,743,000. face amount of first mortgage refunding five per cent bonds, Series B, dated October 1, 1938 and due October 1, 1950 in exchange for an equivalent face amount of bonds secured by the trust indenture of Los Angeles Railway Corporation, dated November 21, 1910, said exchange to be on a basis of bond for bond.

(3) Los Angeles Railway Corporation may, for the purpose of

carrying out said exchange of bonds, issue deposit receipts similar in form to the deposit receipts filed in this proceeding as Exhibits 9, 10 and 11.

(4) Los Angeles Railway Corporation may execute a trust indenture in substantially the same form as the trust indenture filed in this proceeding as Exhibit 7 for the purpose of securing the payment of said Series A and said Series B first mortgage refunding five per cent bonds, provided that the Railroad Commission of the State of California reserves the right to refuse to appoint or participate in the selection of the engineer mentioned in Section 16 of Article III of said trust indenture.

(5) Los Angeles Railway Corporation may execute a supplemental trust indenture in substantially the same form as the supplemental trust indenture filed in this proceeding as Exhibit 8 and modify its general mortgage five per cent bonds, as indicated in said supplemental trust indenture.

(6) Los Angeles Railway Corporation may not expend more than \$7,500. to pay fees of counsel for the investment banking group employed to aid, advise and assist it in obtaining the deposit of said underlying bonds and carrying into effect said plan and agreement of exchange.

(7) Los Angeles Railway Corporation shall file with the Railroad Commission on or before January 31, 1939, a statement showing in detail the expenses incurred by it, on or before December 31, 1938, to put into effect said plan and agreement of exchange. Statements showing expenses incurred subsequent to December 31, 1938 shall be filed at such time as they are requested by the Commission.

(8) 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 Three Thousand Nine Hundred

and Thirty (\$3,930.00) Dollars.

(9) Los Angeles Railway Corporation shall file with the Railroad Commission quarterly reports showing the amount of bonds issued during the quarter, the names of the persons to whom said bonds were issued and the amount and name of the bonds surrendered by each person. The first report shall be filed on or before January 31, 1939 and shall cover the period to and including December 31, 1938. Reports for subsequent quarters shall be filed within thirty (30) days after the close of each quarter.

(10) Los Angeles Railway Corporation shall file with the Railroad Commission within thirty days after their execution two copies of the trust indenture securing the payment of its \$6,860,000. of first mortgage refunding five percent bonds, and two copies of the supplemental trust indentures modifying the terms of its \$9,000,000. of general mortgage five per cent bonds.

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 1st day of August 1938.

Raymond L. Reed
Frank B. Baker
Ray L. Reed
Commissioners.

