

Decision No. 31273

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of

SAN FRANCISCO BAY TOLL-BRIDGE
COMPANY, (a corporation),

for an order, (1) authorizing applicant to issue in exchange for its presently outstanding bonds, debentures, stock and common stock, its new Class A stock, Class B stock and Class C stock, pursuant to the terms and provisions of a proposed plan of reorganization of applicant, and (2) approving the terms and conditions of such issuance and exchange and the fairness of such terms and conditions.

ORIGINAL

Application No. 22142

Orrick, Dahlquist, Neff and Herrington by George Herrington
and Nathan D. Rowley, for applicant.

Adolph Kessler, a bondholder, in propria personâ.

RILEY, COMMISSIONER.

O P I N I O N

The Commission, by its order of August 8, 1938, assigned the above entitled matter to me and ordered that a public hearing should be held thereon on September 13, 1938. Such hearing was held on said date and all persons to whom it is proposed to issue stock had the right to appear and be heard.

The San Francisco Bay Toll-Bridge Company is a corporation organized in 1927 under, and by virtue of the laws of the State of Delaware. Since its incorporation, applicant has been engaged in the business of constructing, owning, maintaining and operating that certain toll-bridge and approaches thereto, known as the San Mateo-Hayward Bridge, which extends across San Francisco Bay from a point near the City of

San Mateo in San Mateo County, to a point in Alameda County. Applicant intends to continue the same general character of business in the future.

In 1937, (Statutes of 1937, page 2478) section two of the Public Utilities Act was amended so as to include in the definition of the term "public utility" as contained in subsection (dd) the words "toll bridge corporation" and also subsection (ee) was added defining the phrase "toll bridge corporation".

Although applicant is a foreign corporation, its counsel is of the opinion that the Railroad Commission has authority over its stock issues.

The San Francisco Bay Toll-Bridge Company has outstanding, bonds, debentures and stocks as follows:

| | |
|---|-----------------------|
| First mortgage 6½% sinking fund bonds, due November 1, 1957 (exclusive of accrued interest)..... | \$4,303,000.00 |
| Fifteen (15) Year participating sinking fund 7% debentures, due November 1, 1942, (exclusive of accrued interest)..... | 2,000,000.00 |
| Preferred 8% cumulative stock of the par value of \$100.00 per share, authorized 25,000 shares, issued and outstanding 8,705 shares..... | 870,500.00 |
| Common stock, par value one cent per share, authorized 175,000 shares, issued and outstanding 128,650 shares..... | <u>1,286.50</u> |
| Grand Total | <u>\$7,174,786.50</u> |

It is of record that the Company has never paid any dividends on any of its outstanding stock. Since September 1931 the Company has paid no interest on its debentures. It has been unable to pay the ^{due} interest/on its bonds on May 1, 1937, November 1, 1937 and May 1, 1938. In view of this situation, certain holders of bonds, or their representatives, and representatives of the Company have prepared a reorganization plan which is filed in this proceeding as Exhibit 4.

To carry the reorganization plan into effect, applicant proposes to amend its articles of incorporation and by virtue of such amendment provide for three classes of stock as follows:

| | |
|--------------------|---------------------|
| Class A stock..... | 172,120 shares |
| Class B stock..... | 20,000 shares |
| Class C stock..... | <u>2,000</u> shares |
| Total | 194,120 shares |

Each share of new stock is to have a par value of \$25.00 per share. The holder of each share of stock shall have one vote, irrespective of the class of stock he holds.

The articles of incorporation are to provide that the net income of the Company, as defined in said articles, will be applied as follows, when, as and if the Board of Directors shall determine to disburse the same:

- First To dividends at the rate of 5% per annum on the Class A stock, cumulative from November 1, 1938; and,
- Second Thereafter to payments (cumulative from November 1, 1938) up to 3% per annum of the total aggregate par value of the Class A stock at the time outstanding, into a sinking fund to be used exclusively for the retirement of Class A stock by purchase or redemption; and,
- Third Thereafter to dividends at the rate of 4% per annum on the Class B stock, cumulative from November 1, 1938; and,
- Fourth Thereafter any remaining balance shall be available for noncumulative dividends on the Class C stock, or for general corporate purposes as determined by the Board of Directors of the Company.

In the event of the liquidation of the Company, Class A and Class B stock are to share ratably up to their total aggregate par value, and any remaining balance is to be distributed as follows and in the following order:

- First To each holder of Class A stock an amount equal to interest at 6 $\frac{1}{2}$ % from November 1, 1936 to November 1, 1938, on the face amount of bonds surrendered in exchange for his Class A stock plus an amount equal to all dividends accrued and not paid on his Class A stock; and
- Second To each holder of Class B stock an amount equal to the difference between the face amount of debentures surrendered in exchange for his Class B stock, and the aggregate par value of such Class B stock, plus an amount equal to 7% from November 1, 1931 to November 1, 1938, on the face amount of such debentures and plus a further amount equal to all dividends accrued and not paid on his Class B stock; and
- Third Any balance remaining shall be distributed ratably to the holders of the Class C stock.

Class A and Class B stocks are redeemable at their par value plus accrued and unpaid dividends on thirty (30) days' mailed notice, but no Class B stock may be redeemed until all Class A stock has been retired.

Under the reorganization plan, the Class A stock of the Company will be issued to the holders of its 6 $\frac{1}{2}$ % first mortgage bonds to a par value equal to the principal amount of their bonds (on the basis of 40 shares per one thousand dollar bond and on a corresponding basis for bonds of lesser denominations) in exchange for their bonds and all accrued interest thereon.

The Class B stock will be issued to debenture holders to a par value equal to 25% of the principal amount of their debentures (on the basis of ten (10) shares per one thousand dollar debenture and a corresponding basis for debentures of lesser denominations) in exchange for their debentures and all interest accrued thereon and all participating rights pertinent thereto.

The Class C stock will be issued to preferred and common stockholders on the basis of .2 shares of Class C stock for each share of preferred stock and all dividends accrued thereon and .002 shares of Class C stock for each share of common stock in exchange for their present stocks.

If the holders of all of applicant's outstanding bonds, debentures, preferred and common stocks, exchange said bonds, debentures, preferred and common stocks for Class A stock, Class B stock and Class C stock on the basis indicated, applicant will have outstanding, stocks as follows:

| | |
|---------------|-----------------------|
| Class A stock | \$4,303,000.00 |
| Class B stock | 500,000.00 |
| Class C stock | <u>49,957.50</u> |
| Total | <u>\$4,852,957.50</u> |

The reorganization plan defines the term net income as follows:

"The term "net income" will be defined in said amendments to the Company's Certificate of Incorporation as the total gross operating and non-operating income of the Company from all sources during any calendar year, less (a) all operating expenses (including all taxes, insurance and compensation of officers and employees), (b) adequate provision for maintenance, repairs and working capital, including the creation and maintenance of a general working capital fund of not more than \$50,000 in cash to be applied to repairs, maintenance and other corporate purposes, (c) capital expenditures and additions and betterments necessary in the judgment of the Board of Directors of the Company for the operation of the Bridge, (d) interest on and repayment of principal of all indebtedness of the Company, including all indebtedness incurred in carrying this Plan into effect, (e) all expenses incurred in carrying this Plan into effect, and (f) all other usual deductions permissible in conformity with standard accounting practices, except that (for the purposes of the foregoing definition) no deduction shall be made for depreciation or amortization charges. Said amendments will provide that the deter-

mination of the Board of Directors of the Company as to the amount of its net income and as to the proper application thereof shall be conclusive."

The Company's gross receipts and expenses and its net income i.e., the amount available for depreciation, interest, amortization of debt discount and expenses, and dividends are reported in Exhibit 2 as follows:

| <u>PERIOD</u> | <u>GROSS RECEIPTS</u> | <u>EXPENSES</u> | <u>NET AVAILABLE FOR DE- PRECIATION, INTEREST, AMORTIZATION OF DISCOUNT & EXPENSES, DIVIDENDS & SURPLUS</u> |
|----------------------------------|-----------------------|-----------------|---|
| 3/3/29-12/31/29 | \$455,654.69 | \$127,371.60 | \$328,283.09 |
| 1930 | 517,751.15 | 176,198.48 | 341,552.67 |
| 1931 | 515,470.27 | 141,915.33 | 373,554.94 |
| 1932 | 461,446.10 | 137,705.29 | 323,740.81 |
| 1933 | 377,568.30 | 116,352.59 | 261,215.71 |
| 1934 | 389,189.78 | 118,357.75 | 270,832.03 |
| 1935 | 421,613.64 | 119,062.72 | 302,550.92 |
| 1936 | 459,158.43 | 151,963.52 | 307,194.91 |
| 1937 | 324,064.94 | 209,770.31 | 114,294.13 |
| 12 months ended June 30, 1938 | 289,148.16 | 257,720.01 | 31,428.15 |

A bondholder has suggested that the holders of debentures and stock should not be permitted to retain an interest in the Company. It has also been suggested that because of income tax laws the Company should be refinanced through an income bond issue. Objection has also been made to the subordinate positions given the debenture holders.

Because of the fact that the Company has defaulted in the payment of its bond interest and has failed to comply with covenants in the trust indenture securing the payment of its bonds, the holders of the Company's bonds are in a position to take the entire property by a foreclosure sale. This, to date, they have not elected to do. The reorganization plan however, does give them about eighty eight and six tenths percent of the outstanding stock. While the payment of dividends on the Class B stock and on the Class C stock is remote, the holders of the Company's debentures and the holders of stock presently outstanding will, through the acceptance of said Class B stock and said Class C stock

retain an interest in the Company. If the properties of the Company are sold, the holders of Class B stock will participate in the distribution of the proceeds. The extent of their participation and the amount, if any, distributed to the holders of Class C stock depends on the price at which the Company's properties are sold. In my opinion the plan of reorganization submitted in this proceeding is fair and reasonable, and I therefore recommend the following form of order.

O R D E R

San Francisco Bay Toll-Bridge Company, having asked permission to issue \$4,852,957.50 par value of its stocks for the purpose indicated in the foregoing opinion, and having asked the Commission to approve the fairness of the terms and conditions of the exchange of said stocks for outstanding bonds, debentures and stocks; a public hearing having been held by me on September 13, 1938 after due notice thereof, and having considered the evidence submitted at such hearing, I find that the plan of reorganization filed in this proceeding as Exhibit 4 is fair as to the terms and conditions of the issue of said stock; that the money, property, or labor to be procured or paid for by the issue of said \$4,852,957.50 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, and that this application should be granted as herein provided, therefore,

IT IS HEREBY ORDERED, that San Francisco Bay Toll-Bridge Company be, and it is hereby, authorized to issue on or before July 1, 1939, its Class A stock to holders of its first mortgage 6½% bonds to a par value equal to the principal amount of their bonds, on the basis of forty (40) shares per \$1,000.00 of bonds and on corresponding basis for bonds of lesser denominations, in exchange for their bonds and all accrued interest thereon.

IT IS HEREBY FURTHER ORDERED, that San Francisco Bay Toll-Bridge Company be, and it is hereby, authorized to issue on or before July 1,

1939, its Class B stock to its debenture holders to a par value equal to 25% of the principal amount of their debentures, on the basis of ten (10) shares per \$1,000.00 debentures and on a corresponding basis for debentures of a lesser denomination in exchange for their debentures and all interest accrued thereon, and all participation rights pertinent thereto.

IT IS HEREBY FURTHER ORDERED, that San Francisco Bay Toll-Bridge Company be, and it is hereby, authorized to issue, on or before July 1, 1939, its Class C stock to its preferred and common stockholders on the basis of .2 shares of Class C stock for each share of preferred stock and all dividends accrued thereon and .002 shares of Class C stock for each share of common stock.

IT IS HEREBY FURTHER ORDERED, that San Francisco Bay Toll-Bridge Company shall file with the Railroad Commission, quarterly reports showing the amount of stocks issued during the quarter, the names of the persons to whom said stocks were issued and the amount of bonds, debentures, and stocks surrendered in exchange for said stocks. 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.

IT IS HEREBY FURTHER ORDERED, that San Francisco Bay Toll-Bridge Company 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 its plan of reorganization. Statements showing expenses incurred subsequent to December 31, 1938, shall be filed at such time as they are required by the Commission.

The foregoing opinion and order are hereby approved and ordered

