

ORIGINAL

Decision No. 32487

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
MARKET STREET RAILWAY COMPANY )

for an order approving a plan for )  
extension of maturity, reduction of )  
interest and change of Sinking Fund )  
provisions of its First Mortgage 7% )  
Sinking Fund Gold Bonds, Series A, )  
dated April 1, 1924, and approving )  
extensions of maturity, reduction )  
of interest and change of Sinking )  
Fund set forth in said Plan. )

Application No. 22954

William M. Abbot and Chickering and  
Gregory, by Allen L. Chickering and  
M. L. Grimmins, for applicant.

BY THE COMMISSION:

O P I N I O N

This is an application by Market Street Railway Company, a corporation, in which it asked:

1. That the Railroad Commission of the State of California set a day for a hearing upon the fairness of the terms and conditions proposed by the company and set forth in the documents annexed to the application as "Exhibit B", at which hearing all persons interested should have the right to appear; and
2. That after such hearing the Railroad Commission approve the plan set forth in such documents and the issue and exchange of bonds, as modified by the plan, for the outstanding bonds as they now exist, and the issue of new coupons on the bonds as extended, and approve the terms and conditions of the issue and exchange of deposit receipts for bonds; and
3. For such other and further relief as the Commission might seem just.

The Railroad Commission, on August 30, 1939, made its order assigning the application to Commissioner Devlin and setting it for a public hearing, to be held on his behalf, before Examiner Fankhauser on Thursday, October 5, 1939, at 10:00 A.M. in the Court Room of the Commission in San Francisco. The order directed the company to publish a notice of said hearing once a week for at least three consecutive weeks in The Recorder, a newspaper of general circulation published in the City and County of San Francisco, and to mail a copy of said notice to all known holders of the company's outstanding bonds.

In accordance with the order the public hearing was held on October 5, 1939. At the hearing applicant filed an affidavit, by E. M. Massey, its Secretary, showing that the notice of hearing was mailed to all known bondholders, and affidavit showing publication of the notice in The Recorder on the 6th, 13th and 20th days of September, 1939. At said hearing all persons interested were accorded the opportunity to be heard.

Market Street Railway Company, as of April 1, 1924, executed a trust indenture and issued \$13,000,000. of first mortgage 7% bonds due April 1, 1940. (Decision No. 13130 dated February 11, 1924, in Application No. 9726). The trust indenture securing the payment of said bonds provided, among other things, that the company, from January 1, 1925, to and including October 1, 1932, should pay into a sinking fund the sum of \$125,000. on the first day of January, April, July and October, being at the rate of \$500,000. a year, and on said days of each of the years 1933 to 1939, both inclusive, and on January 1, 1940, the sum of \$75,000., being at the rate of \$300,000. a year. It was provided, further, that all sinking fund monies must be used to purchase the company's bonds and that all bonds so purchased with monies paid into the sinking fund prior to January 1, 1933 should be

kept alive until that date and then canceled, and that bonds purchased with monies paid into the sinking fund on or subsequent to January 1, 1933, should be kept alive until payment or redemption of all the bonds. Monies realized from the sale of mortgaged property were also paid into the sinking fund. Bonds acquired through the use of such moneys were canceled.

It appears that since the date of issue of the company's bonds it regularly paid interest thereon at the rate of 7 percent per annum and made the quarterly sinking fund payments required by the terms of its trust indenture up to and including April 1, 1938. However, it failed to make the sinking fund payment due July 1, 1938 and it reports that it has since been unable to make any further payments into the sinking fund, although it has continued to meet the interest requirements on its outstanding bonds.

Of the \$13,000,000. of bonds, the company reports that it owns and holds in its treasury \$28,000. face value, that through the operation of the sinking fund it has reacquired and retired \$5,901,500. face value, that \$2,361,500. face value of bonds are now in the sinking fund, leaving total bonds outstanding, as of July 31, 1939, in the amount of \$4,709,000. The company reports that it has been unable to pay the interest on the bonds held alive in the sinking fund, that it will be unable to meet its sinking fund requirements during the remaining life of the bonds and that it will be unable to retire the outstanding bonds at maturity.

Accordingly, in anticipation of the maturity of the bonds on April 1, 1940, the company has prepared for submission to its bondholders, a plan for modification of some of the terms of the bonds,

Under said plan, a copy of which is on file in this proceeding as Exhibit B, the maturity date of the company's bonds will be extended

to April 1, 1945. The interest rate on the bonds beginning April 1, 1940 will be 5% per annum instead of 7% per annum. The sinking fund provisions contained in Section 29 of Article 4 of the trust indenture will be eliminated and any existing default of the company thereunder, waived. In lieu thereof the company shall pay on the first days of January, April, July and October in each year an amount equal to 1/2 of 1% of the principal face amount of bonds outstanding on the day the plan becomes effective, to Ladenburg, Thalmann & Co. or their successors, as fiscal agents, or to the trustee for their account as a sinking fund. The first payment into the sinking fund shall be made on July 1, 1940. The bonds now in the sinking fund shall be canceled. The provision of the trust indenture providing that bonds in the sinking fund are to be kept alive and interest paid thereon will be amended so as to apply only to bonds acquired by operation of the sinking fund provided in the plan.

The company reserves the right to redeem all of the bonds, or any part thereof, on any interest payment date, at 100% of the principal thereof, plus accrued interest.

The plan provides that it shall become effective when there are deposited in accordance with the plan, 95% of the bonds outstanding or such lesser percentage as the company may elect and so advise each depository, but in any event the percentage shall not be less than 85%, without affording the depositor of bonds the privilege of withdrawal within twenty (20) days, after notice with respect thereto, has been mailed in accordance with the provisions of the deposit receipt. Bonds must be deposited prior to December 15, 1939. The company, however, reserves the right to extend the time of deposit. It further reserves the right to modify the plan with the prior approval of the Railroad Commission.

To obtain the consent of the bondholders to the plan, the company has entered into an agreement (Exhibit 2) dated as of September 19, 1939, whereby Dean Witter & Co. and Ladenburg, Thalman & Co. will form a primary group to solicit the deposit of the bonds. Any investment banking concerns may solicit the deposit, such concerns to be classed as the secondary group. In the agreement the company agrees to pay to any member of the primary and secondary groups, a commission of \$5.00 per \$1,000. of bonds deposited, a further commission of \$5.00 per \$1,000. of bonds deposited with either of the two depositaries, that is, Wells Fargo Bank & Union Trust Co. or The Chase National Bank, and, if the plan is declared operative, an additional commission of \$5.00 per \$1,000. of bonds deposited with the depositaries at the time of such declaration. No commissions will be paid on approximately \$1,750,000. of bonds deposited by (1) Wells Fargo Bank & Union Trust Co, its trusts and/or under its control, (2) The First National Bank of New York, (3) Ladenburg, Thalman & Co., (4) The Anglo-California National Bank and (5) Samuel Kahn and family and friends.

In addition to the outstanding bonds the company in its application reports other indebtedness including the following:

<u>Notes Payable</u> <u>Names of Payees</u>	<u>Due on or</u> <u>Before</u>	<u>Date of</u> <u>Interest</u>	<u>Face</u> <u>Amount</u>
To The J. G. Brill Company	Sept. 3, 1940	5%	\$17,339.40
Twin Coach Company	Nov. 15, 1942	6%	7,600.00
Twin Coach Company	Mar. 15, 1943	6%	9,020.00
Yellow Truck & Coach Mfg. Co.	Jun. 15, 1946	3½%	84,992.00
The Anglo-California Nat. Bank	Demand	4%	300,000.00
<u>Accounts Payable</u>			
Standard Gas and Electric Co.	-	6%	919,136.34
Pacific Gas and Electric Co.	-	6%	603,565.15

In the event the plan is consummated, the company covenants as additional security for the bondholders that no payments of principal shall be made on its existing indebtedness to Standard Gas & Electric

Company until the bonds as extended have been paid in full, and also that no payments will be made on its existing bank loans until after the current Sinking Fund requirements on the bonds have been met, and then only in an amount equal to 2 percent of the principal amount of said bank loans annually, except as hereinafter provided. After meeting Sinking Fund requirements, the Company will also agree to use its remaining cash only for working capital or reasonable capital expenditures, and any amount over and above such reasonable requirements shall be used as additional Sinking Funds on bonds and existing bank loans pro rata to the principal amounts of each.

It appears that it has not been the practice of the company to pay in cash the interest on the indebtedness to Standard Gas and Electric Company, but instead to accrue such interest and add it to the outstanding indebtedness. As of December 31, 1938 the applicant herein reported, in its 1938 annual report to this Commission, that Standard Gas and Electric Company held control over its affairs through ownership, indirectly of 39.67% of its outstanding stock. It is noted in the plan now submitted here, applicant states that it will agree that no payment of principal shall be made on the indebtedness to Standard Gas and Electric Company existing on the effective date of the plan, until the bonds as extended shall have been paid in full. In our opinion the agreement should provide, in addition, that no payment be made of interest on the indebtedness to Standard Gas and Electric Company until the bonds shall have been paid in full, and that if any interest is accrued on said debt, it be at a rate of not more than 4% per annum.

The company regularly has filed financial reports with the Railroad Commission. In addition, the Commission recently, has had occasion to inquire into the company's affairs, (Decision No. 31472, dated November 23, 1938, in Application No. 21115) and it clearly appears that the company's earnings and financial condition have not been sufficient to enable it to meet all its requirements under its

trust indenture and to provide for the payment of its remaining bonds on April 1, 1940.

The order herein will approve the proposed refinancing plan.

Such an order, of course, does not compel any holder of bonds to deposit them under the plan. It is for them to determine whether they can realize more by exercising their legal rights in a public foreclosure proceeding or bankruptcy proceeding than by accepting the plan now offered them. In our opinion the plan is fair to the bondholders. It imposes no expense on them. While it does provide for a reduction in the rate of interest paid, it should be remembered that from the time of issue of the bonds, in 1924, to the present, the holders of this company's bonds have enjoyed regular annual interest returns at the rate of 7 percent per annum, and have seen the company reduce the total amount of bonds outstanding from \$13,000,000. to \$4,709,000. The same deed of trust that secures the bonds at present will remain intact, except for amendments to provide for changes in date of maturity, rate of interest and sinking fund, and will continue to secure the payment of the outstanding bonds as modified.

#### O R D E R

A public hearing, after due notice, having been held by the Railroad Commission in this application, and the Railroad Commission having fully considered the matter and the evidence submitted at such hearing, hereby finds that the plan for extension of maturity, reduction of interest and change of sinking fund provisions of the first mortgage 7% sinking fund gold bonds, Series A, of Market Street Railway Company, is fair and reasonable if modified to provide that no payment

of interest shall be made on the company's indebtedness to Standard Gas and Electric Company existing on the effective date of the plan, until the bonds as extended shall have been paid in full and that the rate of interest on such debt be reduced to 4% per annum, therefore,

IT IS HEREBY ORDERED, that Market Street Railway Company be, and it is hereby, authorized to enter into a plan, in the same form as that filed with this application as "Exhibit B", for the extension of maturity, reduction of interest and change in sinking fund provisions of its first mortgage bonds, provided that said plan be modified so as to contain the provision that no payments of interest shall be made on the company's indebtedness to Standard Gas and Electric Company, existing on the effective date of the plan, until all the bonds as extended shall have been paid in full and that the rate of interest on such debt be reduced to 4% per annum.

IT IS HEREBY FURTHER ORDERED, that Market Street Railway Company be, and it hereby is authorized to execute an indenture supplemental to its trust indenture of April 1, 1924 securing the payment of its outstanding bonds, so as to provide for changes in date of maturity, rate of interest and sinking fund payments as provided in said plan, and to issue and exchange deposit receipts for bonds and to issue and exchange bonds as modified by the plan for bonds as they now exist and new interest coupons on the bonds as extended, all as provided in said plan, and, to perform such other acts under the Commission's jurisdiction as are necessary to carry the plan into effect.

IT IS HEREBY FURTHER ORDERED, that the authority herein granted to enter into said plan, execute a supplemental indenture, issue and exchange deposit receipts for bonds, and to perform other acts, is for the purpose of this proceeding only and is granted only in so far as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of said plan, supplemental indenture, issue and exchange of deposit receipts, and other



acts, as to such other legal requirements to which they may be subject.

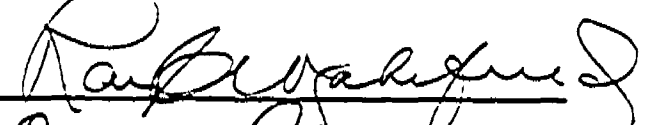


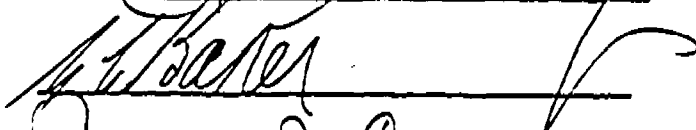

IT IS HEREBY FURTHER ORDERED, that at the time of submission of the aforesaid plan to the bondholders Market Street Railway Company shall file with the Commission a copy of the letter to its bondholders, of the plan as submitted and of the deposit receipt.

IT IS HEREBY FURTHER ORDERED, that Market Street Railway Company shall file two (2) certified copies of the supplemental indenture and of the plan as put into execution within thirty (30) days after execution.

IT IS HEREBY FURTHER ORDERED, that Market Street Railway Company shall file with the Commission on or before January 15, 1940 a report showing in detail the expenses incurred by it on or before December 15, 1939 to put the plan into effect, and the amount of bonds deposited under the plan on or before December 15, 1939 and the name of those depositing said bonds and the amount deposited by each. In the event the company extends the time for the deposit of bonds it shall file on or before April 15, 1940 a similar statement for the period from December 15, 1939 to April 1, 1940.

IT IS HEREBY FURTHER ORDERED, that the authority herein granted shall become effective from and after twenty (20) days from the date hereof.

DATED at San Francisco, California this 17<sup>th</sup> day of October, 1939.

  
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COMMISSIONERS