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Decision No. 48923

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
PACIFIC ELECTRIC RAILWAY COMPANY, a)
corporation, and J. L. HAUGH for)
authority to sell and lease certain)
passenger operative certificates and)
certain passenger facilities used in)
connection therewith.)

Application No. 34249

In the Matter of the Application of)
METROPOLITAN COACH LINES, a corpora-)
tion, for authority to issue stock,)
notes and debentures to pay for the)
passenger stage properties of)
Pacific Electric Railway, and for)
additional equipment.)

Application No. 34402

*Fee Paid on
Dec. 19020. 7/11/53*

J. L. Haugh, and Lindley, Lazar & Scales, by Fred E. Lindley,
for applicant Metropolitan Coach Lines, and E. D. Yeomans,
for applicant Pacific Electric Railway Company.
Alan G. Campbell, Assistant City Attorney, T. M. Chubb,
Chief Engineer and General Manager, Department of Public
Utilities and Transportation, R. W. Russell, Assistant
General Manager, for the City of Los Angeles, H. A. Shelley,
for Wilmington Bus Company, Clinton M. Chittenden, for
Atkinson Transportation Company, Frank Atkinson, for South
Los Angeles Transportation Company, Thomas Arnott, for
Asbury Rapid Transit System, Clarence A. Winder and Frank L.
Kostlan, for City of Pasadena, Henry McClernan, City
Attorney, and John H. Lauton, Assistant City Attorney, for
City of Glendale, Gordon E. Sandberg, for Long Beach Chamber
of Commerce, Charles Boehm, for Southern Cities Transit, Inc.,
John W. Chapman, for Holbrook Transit Co.; Robert A. Ramsay,
in propria persona, Elmer M. Enstrom, Jr., for Mission Park
Property Owners Association, and Carl F. Fennema, for
Downtown Businessmen's Association, interested parties.
George E. Bodle, Attorney, Irl D. Brett, Attorney, and
Henry P. Melnikow, Director, National Labor Bureau, and
Economic Advisor, for Brotherhood of Railroad Trainmen,
Brotherhood of Railway and Steamship Clerks, Freight
Handlers, Express and Station Employees, Order of Railroad
Telegraphers, Brotherhood of Railroad Signalmen of America,
American Train Dispatchers' Association, Brotherhood of
Maintenance of Way Employees, System Federation No. 159,
Railway Employees' Dept., A.F.L. representing Brotherhood of
Railway Carmen of America, International Association of
Machinists, Int. Bro. Boilermakers, Drop Forgers & Helpers,
Sheet Metal Workers' International Association, International
Brotherhood of Electrical Workers and International Brother-
hood Firemen & Oilers, Herbert B. Atkinson, for Independent
Motorbus Operators Association of Los Angeles, Henry E.
Jordan, Chief Engineer of Bureau of Franchises and Public

Utilities, City of Long Beach, Robert H. Richmond, for "Adequate Transit Group", Mrs. C. Dewar, Emory Marks and L. R. Holmes, in propria personae, Mrs. Jesse L. Graham, for Echo Park Union and Providence Congregational Church, and Charles H. Thorpe, for Transit Research Bureau, protestants.

F. Coleman, J. G. Hunter and H. J. McCarthy, for the Commission's staff.

O P I N I O N

The Pacific Electric Railway Company, a California corporation, operates a general freight and passenger transportation business in the counties of Los Angeles, Orange, Riverside and San Bernardino. In the conduct of its passenger transportation business it operates railroad, street railroad and passenger stage services. The railroad and street railroad services fall into two groups: (1) those operated on joint freight and passenger facilities, including the Long Beach, Bellflower, San Pedro and Watts lines; and (2) those operated on exclusive rail passenger facilities, including the Glendale, Burbank and Hollywood Boulevard lines. The passenger stage operations are conducted generally throughout the area of service under certificates of public convenience and necessity issued by this Commission.

In Application No. 34249, Pacific Electric Railway Company proposes to sell to J. L. Haugh, an individual, and Western Transit Systems, Inc., a Nevada corporation, or their assigns, all of its operating authority to conduct operations as a passenger stage corporation, together with certain specified physical properties in connection therewith, and, also to permit the above-named transferees

- (1) Haugh and Western have assigned all their interests in said contract of sale to Metropolitan Coach Lines, a California corporation, which will receive, own and operate the properties transferred. (App. 34249)
- (2) A list of the Commission decisions granting this operating authority is set out in Appendix A attached hereto.
- (3) A detailed description of the properties is set out in Exhibit "A" attached to the agreement of sale, in evidence herein as Exhibit 1.

or their assigns to use for a period of two years the rail passenger cars and rail facilities necessary to conduct the afore-mentioned rail passenger operations.

By Application No. 34402 the Metropolitan Coach Lines, a California corporation, requests authority to issue stock, notes and debentures in order to finance the purchase of the passenger stage properties of Pacific Electric Railway Company, and for additional equipment and working cash.

Public hearings were held in Los Angeles before Commissioner Potter and Examiner Syphers on June 8 and 9, 1953, during which time evidence was adduced and on the last named date both applications were submitted on a consolidated record. The matters now are ready for decision.

At the hearing, J. L. Haugh, the president of the Metropolitan Coach Lines in Application No. 34402, detailed the history of the negotiations leading to the proposed sale and also testified as to his experience in the passenger transportation field. Exhibit 1 is a copy of the agreement of sale. Exhibit 2 contains a description of the proposed sale and a summary of the formation, management and operation of the Metropolitan Coach Lines. An examination of these exhibits discloses that the Pacific Electric Railway Company intends to discontinue completely all of its passenger carrying operations and to transfer to the buyer all passenger operative rights and certain specified properties. In addition, Pacific Electric Railway Company intends to

grant to the buyer, rental free, the right to the use of rail passenger facilities including rail passenger cars, trackage, overhead facilities, and certain real property. This right to use is limited under the agreement between the parties (Exhibit 1) to a period of two years with the provision that if it is extended beyond that time the buyers shall pay a rental upon a month-to-month basis.

The agreed purchase price to be paid Pacific Electric Railway Company is the sum of \$7,206,634, subject to certain adjustments with respect to the furniture, office, service and shop equipment, tools and spare automotive units. It is proposed that the cash down payment will be \$4,750,000 and that the balance of the purchase price will be represented by a note to Pacific Electric Railway Company. Metropolitan Coach Lines reports the funds required to meet the purchase price, to pay for additional equipment and to provide working capital and the sources of such funds, as follows:

Funds Required

Purchase price of property	\$7,206,634
Purchase price of new equipment and working capital	1,243,500
Organization expense	50,000
Total	<u>8,500,134</u>

Sources of Funds

Bank loan, to be paid in 60 equal monthly installments, 4½% interest	\$3,000,000
Bank loan, to be repaid in 72 equal monthly installments, 4½% interest	660,000
Purchase money, 5% mortgage payable in installments of 10% each at end of 6th, 7th, 8th and 9th years, and 60% at end of 10th year	2,456,634
Debentures, 5% 12 year	1,000,000
Preferred stock 82,750 shares, 6%, par value \$10	827,500
Common stock \$1 par value, voting 481,000 shares, nonvoting 75,000 shares	556,000
Total	<u>8,500,134</u>

In order to effect this capitalization, the Metropolitan Coach Lines will borrow the sum of \$3,660,000 from the Bank of America National Trust and Savings Association, to be represented by two promissory notes, the first in the amount of \$3,000,000 payable \$50,000 on principal monthly, maturing five years from its date and bearing interest at the rate of $4\frac{1}{2}\%$ per annum, which interest is to be payable monthly. This note will be secured by a chattel mortgage on approximately 660 of the motor coaches which are proposed to be purchased from the Pacific Electric Railway Company. The second note is to be in the amount of \$660,000, payable \$9,170 on principal monthly, maturing six years from its date, bearing interest at the rate of $4\frac{1}{2}\%$ per annum, payable monthly. This note is to be secured by a chattel mortgage on 35 new General Motors coaches which are now being purchased by the Pacific Electric Railway and being sold to the buyers herein.

As previously indicated herein, the total purchase price is set at \$7,206,634 and the cash down payment is to be \$4,750,000, leaving a balance of \$2,456,634. Metropolitan Coach Lines proposes to execute a note to the seller for this amount, the note to be payable in four installments of 10 per cent each at the end of the sixth, seventh, eighth and ninth years, and one installment of 60 per cent at the end of ten years after the date of the note. This note will bear interest at the rate of 5 per cent per annum, payable semiannually and will be secured by a deed of trust encumbrance on the property being purchased from the seller, which deed of trust will also apply to any after-acquired property of the Metropolitan Coach Lines. This encumbrance will be subject to the first liens of the bank chattel mortgages on the motor coaches previously referred to herein. The railway note, likewise, will be subordinated to the bank note of \$3,000,000 hereinabove discussed.

The Metropolitan Coach Lines also proposes to sell and issue debentures in the total amount of \$1,000,000, each debenture being in the amount of \$1,000. They will mature 12 years from date and bear interest at the rate of 5 per cent per annum, payable semiannually. Exhibit 14 is a copy of the indenture to be issued by Metropolitan Coach Lines in connection with the sale of debentures. The balance of the financing is to be accomplished by the issuance of 82,750 shares of 6 per cent preferred stock, each share having a par value of \$10, or a total value of \$827,500, and 556,000 shares of common stock, each share having a par value of \$1. The preferred stock will be nonvoting but will acquire voting privileges in the event dividends thereon are not declared for a period of three years. Four hundred eighty one thousand of the common shares will have voting privileges and the remaining 75,000 shares of common stock will be nonvoting.

The testimony discloses that J. L. Haugh will purchase 150,000 shares of the common voting stock and 25,000 shares of the common nonvoting stock at par value and will not purchase any preferred stock. Of the remaining 331,000 shares of common voting stock, 301,000 shares, together with 75,150 shares of the preferred stock will be sold in 35 units of \$30,100 each, or a total amount of \$1,053,500. Each \$30,100 unit will consist of \$21,500 of preferred stock and \$8,600 of common stock. This will leave a remainder of 7,500 shares of preferred stock and 30,000 shares of common voting stock which will be sold under installment contracts to key officials of the company. The remaining 50,000 shares of common nonvoting stock will be sold on a pro rata basis to the purchasers of the \$1,000,000 of debentures.

Further testimony presented by this witness included the proposed board of directors and the officers of the Metropolitan Coach Lines.

Schedule B attached to Exhibit 2 contains an estimate of operating revenues and expenses, cash, capital expenditures, depreciation, interest on equipment, and a pro forma balance statement for the Metropolitan Coach Lines. The witness testified that the estimate of operating revenues and expenses is based upon the supposition that the rail service will be discontinued within six months from the date of purchase. It was the opinion of this witness that if passenger rail service is not discontinued within a period of six months' time, it will be necessary for the Metropolitan Coach Lines to apply for authority to increase substantially the fares charged.

The witness further testified as to the general plan of operation of the new company, stating that he intended to institute a program of preventive maintenance, to standardize on one type of coach and to expend about \$10,000,000 for new equipment in the next ten years and approximately \$2,000,000 for new shop machinery and other facilities during this same period. He was of the opinion that the new company could operate at a substantial saving over the costs of the Pacific Electric Railway operations and, in this connection, stated that he believed there could be effected savings in overhead expense and in methods of accounting and reporting. He was of the opinion that extensive advertising, the changing and rearranging of routes, the elimination of duplicate street use, the use of the freeways to the greatest extent possible, a constant check of schedules and the use of an improved dispatching and supervision program would all tend to reduce operating expenses.

and increase the efficiency of the new operation. He specifically stated that he planned to purchase 115 new buses during the first year of operation should the transfer be approved.

Under the proposed plan of operation the Pacific Electric Railway will furnish and maintain the rail facilities to the extent necessary for passenger use.

A witness for the Pacific Electric Railway presented Exhibit 4 which is the ledger value and original cost of the facilities proposed to be sold, Exhibit 5, the ledger value and original cost of the facilities proposed to be leased for the rail operation, and Exhibit 6, which is the proposal of the Pacific Electric Railway Company in relation to the protection of employees who may be affected by this sale. This witness testified that definite agreements had not been made with the employees or their representatives in this connection.

The Director of the National Labor Bureau, a private service organization, presented testimony concerning the employees who might be affected by the proposed sale. Exhibit 7, produced by this witness, sets out the effect of the proposed transfer upon the employees and their dependents, as well as pensioners and widows and orphans of deceased employees. This witness discussed the status of negotiations between the employees and the Pacific Electric Railway and submitted Exhibits 8, 9 and 10 which contain proposals in this connection. It was his position that a definite agreement with the employees should be reached before the sale is permitted.

Exhibit 11 is a copy of a resolution of the Board of Public Utilities and Transportation of the City of Los Angeles approving the transfer hereinbefore discussed to Metropolitan Coach Lines.

Additional testimony was presented by various interested groups, including representatives of civic and motor bus operating groups. Likewise, a representative of the retired employees of the Pacific Electric Railway Company presented testimony which principally was concerned with any possible loss of passes which these retired employees might suffer as a result of the sale.

After a full consideration of this record we hereby find that the Metropolitan Coach Lines, when its financing and organization are completed, will be qualified to conduct the operations herein sought to be purchased and that the proposed sale by Pacific Electric Railway Company to Metropolitan Coach Lines is not adverse to the public interest. The sale will be approved subject to certain conditions.

This record discloses that there are two types of operations concerned: (1) passenger stage operations by motor coach, and (2) rail passenger operations. The purchaser, Metropolitan Coach Lines, according to this record, will have the facilities to conduct the motor coach operations but must rely upon the Pacific Electric Railway for the rail facilities to conduct the passenger rail operations. The Agreement of Sale, Exhibit 1, provides that the seller shall furnish these rail facilities to the buyer for a period of two years rent free and thereafter on a month-to-month basis at a fair rental value which shall be determined by agreement of the parties or by arbitration. The testimony discloses that it is the intention of the buyer to apply for authority to abandon and discontinue rail passenger service within six months after taking over the operations. However, the issue of abandonment was not tried in this proceeding, and we now declare that regardless of the intention of the buyer or regardless of any provisions in the Agreement of Sale to the contrary, the Metropolitan Coach Lines

will be required to continue in a reasonable and adequate manner the existing rail passenger operations and the Pacific Electric Railway Company will be required to furnish the necessary rail facilities to conduct these rail passenger operations unless and until otherwise ordered by this Commission.

An examination of the evidence relating to the present and proposed status of employees who might be affected by the proposed sale discloses that no definite agreement has been reached as between the representatives of the employees and either the seller or the buyer herein. The problems involved concern the possible dismissal of employees, the loss or retention of various rights resulting from their employment, terminal pay, losses of seniority, loss of passes and various other alleged benefits.

The agreement between the seller and the buyer, Exhibit 1, contains under Article III therein provisions relating to employees. An examination of these provisions discloses that "the parties recognize an obligation to provide employment to the largest possible number of employees of Railway whose services may reasonably be required by buyer." Under this agreement the buyer agrees to offer employment to all persons employed by the railway to the extent that buyer's operations shall so require. This employment is to be offered at the same working conditions, and provisions are made relative to pension rights and the obligation to re-employ former employees. An examination of the evidence herein discloses that the Pacific Electric Railway Company recognizes an obligation to those employees who might be placed in a worse position in respect to compensation and rules governing working conditions. According to the testimony it is the plan of Pacific Electric Railway Company to retain some employees and, as hereinabove

indicated, it is the intention of the purchaser to employ in the new operation as many of the existing employees as the operations require. This testimony shows no disposition on the part of any of the interested parties to take any action which may be adverse to the public interest with regard to the status of employees.

While it is true that no definite agreement as to employees' rights and privileges has been reached between the representatives of labor and either the seller or the buyer, the record discloses that negotiations have been and are being conducted by the parties. We find that this record poses no issue with regard to labor contracts which this Commission is constrained to resolve, at this time, as a condition to authorizing the transfer herein proposed.

There was testimony relating to the fact that certain employees and also certain retired employees, pensioners and their families might lose some existing pass privileges. Since the ultimate arrangements between the employees and the seller and purchaser cannot now definitely be determined by this Commission, we will not, at this time, condition the approval of this sale upon the completion of negotiations between the employees and the seller and buyer. However, in granting the authority herein requested, we hereby place all parties upon notice that the Commission expects the seller and purchaser to make reasonable provision for the employees of the seller who will be affected by the transfer of the properties herein authorized and the Commission, as a condition to the authority herein granted, reserves the jurisdiction to attach appropriate conditions hereto concerning employee

L-34249 SL *
A-34402

benefits should the Commission, after hearing, find that seller and purchaser, or either, have not made reasonable provisions regarding such employee benefits.

The authority herein granted shall not be construed to be a finding of the value of the operative rights and properties herein authorized to be transferred.

O R D E R

Application as above entitled having been filed, public hearings having been held, the Commission being fully advised in the premises and having found that the requested transfer of properties and issuance of securities will not be adverse to the public interest, that the money, property or labor to be purchased or paid for through the issuance of such securities is reasonably required for the purposes set forth herein, and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income,

IT IS ORDERED:

(1) That after the effective date hereof and on or before December 31, 1953, the Pacific Electric Railway Company and the Metropolitan Coach Lines may execute an Agreement of Sale in substantially the same form as that set forth in the agreement attached to the application herein and marked Exhibit 1, and carry out the terms thereof, and Pacific Electric Railway Company may transfer to Metropolitan Coach Lines, and the latter may acquire from the former, the operative rights referred to in the foregoing opinion pursuant to the terms of that agreement, subject to the following conditions:

- (a) That the parties hereto, before the sale herein authorized is completed, shall file with this Commission satisfactory evidence that the Pacific Electric Railway Company has specifically agreed to furnish to Metropolitan Coach Lines and to keep in an adequate state of repair and maintenance all the rail facilities necessary to conduct the rail passenger operations herein concerned, and that the Metropolitan Coach Lines has specifically agreed to conduct these rail passenger operations in a reasonable and adequate manner unless and until otherwise authorized by this Commission. Nothing in this decision and order shall in any way be construed as authorizing the discontinuance of rail passenger operations.

- (b) That within thirty days after consummation of the transfer herein authorized, Metropolitan Coach Lines shall notify the Commission in writing of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.
- (c) That after the effective date hereof and on or before December 31, 1953, applicants shall comply with the provisions of General Orders Nos. 79, 80 and 98 by filing in triplicate, and concurrently making effective, appropriate tariffs and time schedules on not less than five days' notice to the Commission and the public.

(2) That Metropolitan Coach Lines, after the effective date hereof, may issue, sell, and deliver the following shares of stock in the amounts and classes indicated:

- (a) 150,000 shares of common voting stock and 25,000 shares of common nonvoting stock to J. L. Haugh for \$1 per share, for cash, in the total amount of \$175,000.
- (b) 75,250 shares of 6 per cent preferred stock, each share having a par value of \$10, or a total value of \$752,500, and 301,000 shares of common voting stock at \$1 per share, or a total value of \$301,000, said shares to be sold in blocks of one preferred share and four common voting shares, for cash.
- (c) 7,500 shares of 6 per cent preferred stock, each share having a par value of \$10, or a total value of \$75,000, and 30,000 shares of common voting stock, each share having a value of \$1, or a total value of \$30,000, said shares to be sold in blocks of one preferred and four common voting shares to key officials of Metropolitan Coach Lines on contracts permitting the payment of the purchase price in installments over a period of time, the stock to be issued when fully paid for.
- (d) 50,000 shares of common nonvoting stock, each share having a par value of \$1, or a total value of \$50,000, for cash.

(3) That Metropolitan Coach Lines, after the effective date hereof, may issue, sell, and deliver at par 1,000 debentures, each debenture having a value of \$1,000, or a total value of \$1,000,000, for cash, and may execute a debenture agreement in, or substantially in, the same form as that filed in Application No. 34402 as Exhibit 14.

(4) That Metropolitan Coach Lines, after the effective date hereof, may execute and deliver the following documents to the Bank of America National Trust and Savings Association:

- (a) A note for \$3,000,000 bearing $4\frac{1}{2}$ per cent interest, payable in sixty equal monthly installments, and the accompanying chattel mortgage.
- (b) A note for \$660,000 bearing $4\frac{1}{2}$ per cent interest, payable in seventy-two equal monthly installments, and the accompanying chattel mortgage.
- (c) A bank loan agreement relating to the foregoing two listed notes as set out in Exhibit "K" attached to the application.
- (d) A subordination agreement relating to the foregoing two listed notes as set out in Exhibit "L" attached to the application.

(5) That Metropolitan Coach Lines, after the effective date hereof, may execute and deliver to the Pacific Electric Railway Company a note for the balance of the purchase price in the amount of approximately \$2,456,634, and, together therewith, a related deed of trust and mortgage and any other documents necessary to complete the bank and railway loans in connection therewith.

(6) That Metropolitan Coach Lines shall use the proceeds from the issue of said stocks, notes and debentures for the purposes set forth in the preceding opinion.

(7) That Metropolitan Coach Lines shall file with the Commission monthly reports as required by General Order No. 24-A, which order in so far as applicable is made a part of this order.

(8) That the authority granted herein shall terminate if not exercised by the parties on or before December 31, 1953, unless the time be extended by subsequent order of this Commission.

The authority herein granted to issue notes and debentures shall become effective when Metropolitan Coach Lines has paid the

A-34249 SL
A-34402

fee prescribed by Section 1904(b) of the Public Utilities Code. In other respects the authority herein granted shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 4th day of August, 1953.

Q. J. [Signature]
President
[Signature]
Harold H. Hill
[Signature]
[Signature]
Commissioners

APPENDIX "A"

Pacific Electric Railway Company's Certificates
for Passenger Stage Operative Rights
from the California Public Utilities Commission

<u>Application No.</u>	<u>Routes</u>	<u>Decision No.</u>	<u>Date</u>
32443		46471	November 27, 1951
32835	67	46522	December 11, 1951
32836	62 & 63	46567	December 18, 1951
32947	50	46538	December 18, 1951
33550	58	47534	August 5, 1952
33243	91, 93 & 94	47565	August 11, 1952
33518	91	47973	November 25, 1952
33638	86	47974	November 25, 1952
33441	83	48135	January 6, 1953
33834	69	48071	December 16, 1952
33833	70, 71 & 79	47957	November 25, 1952
33861	75, 76 & 77	48183	January 19, 1953
33863	61	48166	January 13, 1953
34027	51	48254	February 10, 1953