

ORIGINAL

Decision No. 20669

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )

ESTES & FRAILEY )

for Certificate of Public Convenience )  
and Necessity to operate freight line )  
service from Alturas to Round Mountain, )  
inclusive, and intermediate points, and )  
to Sacramento and Marysville and return. )

Application No. 14765  
(Amended)

Carter and Smith, by L. C. Smith, for Applicant.

Chenoweth and Leininger, by C. W. Leininger,  
for Allen and Linville, Protestants.

A. K. Wylie and J. E. Mahan, for Nevada-California-  
Oregon Railway, Protestants.

Edward Stern, for American Railway Express Company,  
Protestant.

W. S. Johnson, for Southern Pacific Company and  
Mc Cloud River Railroad Company and  
W. L. Starr.

BY THE COMMISSION:

O P I N I O N

The above entitled proceeding, as amended, is an application by L. M. Estes and William Frailey for a certificate of public convenience and necessity to operate an automotive trucking service between Alturas and Round Mountain and intermediate points and Sacramento and Marysville. Local service between Sacramento and Marysville and points intermediate is not proposed. Time schedules submitted with and made a part of the application show two round trips

weekly. Rates are to be charged in accordance with an exhibit marked "B".

L. M. Estes, one of the applicants, as a witness in his own behalf, testified that the application was filed as a result of his experience in the operation of what he described as a "cash and carry" service, which is in reality a peddling service. The operator purchases his goods and then sells them to certain merchants along the line of travel, including in his price a charge for transportation. He had also transported creamery products under contract. As a result of an informal complaint filed with the Railroad Commission charging that he was operating as a common carrier between Sacramento and Alturas, he discontinued this service, selling his equipment to one Clark. He testified that in the event the Commission granted the instant application he would repurchase this equipment. Clark is at present operating the "cash and carry" service. He is also, according to Estes, transporting creamery products under contract. Describing the source of tonnage which he expected to receive, Estes said he estimated butter and dairy products hauled from Alturas to Sacramento and Marysville would total five tons per week with no other prospect of tonnage between those points. He also expected to haul 750 pounds of cheese weekly from Bieber. This commodity is now being transported by Clark under contract. When asked what he expected to haul from Canby, Adin, McArthur and Cassell to Sacramento he answered, "nothing." The witness further stated he had no definite expectations as to all other points. He did not propose to serve Redding. As to operation in the reverse direction, witness testified he did not expect much tonnage for Round Mountain from Sacramento and Marysville; that the shipments to Montgomery Creek would be light; and that there would be noth-

ing to Burney and Cassell. To Fall River Mills he expected to get a general merchandise business totalling 3,000 pounds per week, and to McArthur 1,000 to 2,000 pounds per week. All these estimates he said were based upon his "cash and carry" experience. He also expected to haul one and one-half tons of groceries per week to Bieber and one ton to Lookout. His estimates also included one and one-half tons to Adin and one-half ton to Canby. He had no "cash and carry" experience as to Alturas. The witness estimated the cost per truck mile of operation would range from twenty to twenty-five cents and that a revenue of \$300.00 per round trip would prove profitable. The distance between Sacramento and Alturas via the proposed route is 337 miles.

Edward Stern, representing protestant American Railway Express Company, moved that the application be dismissed on the ground that the witness had admitted he had continued to operate notwithstanding the Railroad Commission's notice to discontinue. This motion is hereby denied.

Applicants summoned thirteen witnesses, all of whom undertook to support the application by their testimony. The evidence does not disclose a concerted unified demand for the proposed service, nor, in fact, much unanimity of opinion among the witnesses called on behalf of applicant. These witnesses were, for the most part, dealers in general merchandise located at various towns between Alturas and Round Mountain. Many of them receive their goods from Sacramento, shipments coming by rail to Redding and thence by truck to destination. There was some complaint against the slowness of this service, but it was generally admitted that the service of Allen and Linville (Redding-Bieber Stage Line) and Clark's "cash and carry" system

were satisfactory, as far as they went. One of applicants' witnesses testified, in fact, that the proposed service would be convenient but not necessary. These witnesses appeared to have no specific information as to applicants' time schedules or proposed rates.

The Modoc County Development Board, through one of its members, offered in evidence a resolution of said board praying that the application of Estes and Frailey be denied on the ground that the proposed service would jeopardize existing rail service. There was also introduced in evidence on behalf of protestants, Allen & Linville, a petition signed by forty-four residents of Redding and points intermediate between Redding and Bieber, protesting the granting of the application.

The granting of the application was actively protested by Allen and Linville, the Nevada-California-Oregon Railway, the Southern Pacific Company, and American Railway Express Company.

Allen and Linville, in August, 1928, acquired from one J. D. Weast operative rights for the transportation of passengers and freight between Redding and Bieber and intermediate points, and has since rendered service over said route. Shipments from Bieber and other points going south to Sacramento are taken by truck to Redding and thence shipped by rail to destination, and the reverse operation on north-bound shipments. The evidence shows that this service is entirely satisfactory.

Nevada-California-Oregon Railway produced several local witnesses, who testified that the rail service of that line was adequate and satisfactory and that there was no necessity for the proposed truck service. The traffic manager of this line testified that a new schedule of reduced freight rates between Sacramento and Alturas would become effective on November 20, 1928.

Protestant, Southern Pacific Company, called an operating witness who offered testimony relating to present rail service into Alturas. According to his statement, merchandise shipments originating at Sacramento, destined to Alturas, go forward daily and are routed via Reno, where transfer is made to Alturas cars. At Wendel these cars are turned over to the Nevada-California-Oregon Railway. Shipments generally arrive at Alturas on the morning of the second day after leaving Sacramento, the distance by this route being approximately 340 miles.

We have given full consideration to all the evidence in this proceeding and are of the opinion, and hereby find as a fact, that public convenience and necessity do not require the service proposed to be established by applicants herein. Taking into consideration the new freight rate schedule offered by the Nevada-California-Oregon Railway, its recent broad-gauging with consequent increased ability to serve the territory affected, the almost uniform declaration of witnesses that the present rail and auto service meets most of their needs, and the very apparent showing that the service desired by those testifying in behalf of applicants, is a service not within the scope of a common carrier, but rather a "cash and carry" or peddling service, we cannot conclude otherwise. Furthermore, the territory proposed to be served is not thickly settled and additional service, by depleting the revenues of existing carriers, would make more difficult the maintenance of transportation facilities than are now fully adequate.

#### ORDER

Public hearings having been held in the above-entitled proceeding, the matter having been submitted and the Commission being fully advised,

IT IS HEREBY ORDERED that Application No. 14765 be,  
and the same is hereby denied.

Dated at San Francisco, California, this 12<sup>th</sup> day  
of January, 1929.

Thos S. Lott

C. J. Leary

Leon C. White

M. M. M.

Commissioners.