

Decision No. 9538

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
California Southern Railroad Company,
a corporation, for leave to lease
railroad under Section 51 of Public
Utilities Act.

Application 7148.

Ward Chapman, for applicant.
Platt Kent, for The Atchison, Topeka & Santa
Fe Railway Company.

LOVELAND, Commissioner:

O P I N I O N

California Southern Railroad Company, hereinafter referred to as the California Southern, asks this Commission's authority and approval for the making of a lease of its railroad to the Atchison, Topeka & Santa Fe Railway Company, hereinafter referred to as the Santa Fe.

Under the terms of the proposed lease the Santa Fe will acquire control of the California Southern and undertakes to operate that railroad as, practically, a branch line of its system.

The Santa Fe joins in this application.

The reasons for the proposed change of control are set forth in the application. It is alleged that for several months past the California Southern has been operated under adverse conditions on account of business depression and other circumstances that have reduced its revenues and that large sums will have to be spent in the near future in maintenance and betterments. The California Southern, it is alleged, finds itself un-

able to raise the necessary funds for the making of such betterments. The road, as at present operated, leases the bulk of its equipment from the Santa Fe and the rental charges absorb a large part of the revenues. There appears to be no prospect of the California Southern being put in a position where it can acquire and operate its own equipment.

It further appears that for several years past the Santa Fe Land Improvement Company, hereinafter referred to as the Land Company, a corporation allied ^{with} and controlled by the Santa Fe, has had an option through J. M. Neeland, applicant's president and principal stockholder, for the purchase of all of the outstanding bonds and stock of the California Southern and that in May of 1921 the Land Company, at the instance of Mr. Neeland, elected to exercise its option to take over all of the securities of the California Southern. It appears, however, that the Land Company was willing to exercise this option only on condition that the California Southern should be leased to the Santa Fe.

A contract was accordingly entered into between J. M. Neeland and the Land Company, whereby provision was made for the taking over of all of the bonds and stock of the California Southern and transferring the operation of the road to the Santa Fe under a lease agreement which imposed upon the Santa Fe the obligation of maintaining and operating the railroad. Copies of the proposed lease and of the contract between J. M. Neeland and the Land Company are on file with this Commission as exhibits in this proceeding.

During the hearing of this application in San Francisco, attention was called to the fact that the transfer of control of this railroad is apparently to be effected not by the proposed lease alone but by two instruments, the lease and

The Neeland contract together. The Neeland contract provides that, in addition to his obligation to deliver all of the capital stock and bonds of the California Southern, Mr. Neeland undertakes to sell and to deliver-

"The said California Southern Railroad and its property real and personal of all kinds, free and clear of indebtedness, excepting the indebtedness represented by the outstanding amount of mortgage bonds and capital stock issued as set forth in paragraph A. of this section numbered 2."

It was suggested that, in order to avoid delay in the rendering of a decision, applicant might wish to amend its application, asking for approval of the Neeland contract as well as the lease. Applicant's attorney, Mr. Ward Chapman, also took this view and stated (Tr. page 19):

"I was going to say I think the ideas expressed here are very pertinent, and if the Commission will permit me I would like to propose an amendment which shall recite that the contract and the lease are concurrent instruments and really a part of one transaction, and so allied that the approval of both is necessary, and I would then change the prayer of my petition in requesting the order of approving the transaction as a whole which comprises the lease and the contract for the whole of the control of all of the stock and bonds as a part of one transaction."

The application may, therefore, be considered as amended according to the statement just quoted.

This matter first came to the Commission's attention through action of the Interstate Commerce Commission. That commission, pursuant to the provision of paragraph 19, section 1, of the Interstate Commerce Act, notified the Governor of this state that application had been received from the Santa Fe for approval and authorization of acquisition of control of the California Southern in the counties of San Bernardino and Riverside in the state of California. The Governor, as is the practice in such cases, referred the matter to this Commission. A copy of the Santa Fe's application was filed with the Interstate Commerce Commission's notification. This Com-

mission was asked to file within ten days such re-presentations or request for formal hearing as the state authorities might wish to make. This Commission thereupon wired its protest to the Interstate Commerce Commission against the ex parte granting of the application and took the position that, under Section 51 of the California Public Utilities Act a transfer of control of one railroad to another operating within this state is unlawful unless approved by this Commission. No application for permission to make the proposed transfer was before this Commission either from the California Southern or the Santa Fe. The Interstate Commerce Commission, upon such re-presentation from this Commission, notified us that the case would be held open for a reasonable time and that further consideration to this matter would be given by the Interstate Commerce Commission.

In the application before us, the applicant now prays that the protest of this Commission against the approval of the proposed lease by the Interstate Commerce Commission be withdrawn.

This Commission is familiar with the history of this railroad and aware of the best interests of the territory it serves. I am satisfied that the proposed transfer of control and the operation of the road by the Santa Fe, as proposed under the lease, will be to the best interests of all concerned and will be of benefit to the Palo Verde Valley, a community which is rapidly growing in importance and which is vitally dependent upon good railroad transportation facilities. It appears to me, and this view coincides with the view expressed by this Commission's engineering department, that the operation of the road by the Santa Fe will result in material operating economies and should result in a better and more dependable service than is now given. The testimony

shows that the proposed transfer will have no adverse effect upon freight and passenger rates which were recently fixed for this road by order of this Commission.

In view of these facts, it is my recommendation that this application be granted and I submit the following form of order:

O R D E R

California Southern Railroad Company having made application to this Commission for an order granting permission for the making of a proposed lease to the Atchison, Topeka and Santa Fe Railway Company, and for an order authorizing the carrying out of a contract made between J. M. Neeland and the Santa Fe Land Improvement Company, which lease and contract are applicant's Exhibits 2 and 3 and are hereby referred to and made a part of this Opinion and Order, and it appearing to the Commission that the proposed transfer of control under the instruments referred to is just and reasonable and to the best interest of all concerned,

IT IS HEREBY ORDERED that the application of California Southern Railroad Company, as joined in by the Atchison, Topeka and Santa Fe Railway Company, be and the same is hereby granted under the following condition:

Applicant shall file with the Commission within thirty (30) days from the date of this order duly executed copies, in their final form, of (a) the proposed lease referred to above; and (b) of the contract also referred to above between J. M. Neeland and the Santa Fe Land Improvement Company.

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 22^d day
of September, 1921.

H. W. B. ...
H. D. ...
H. Stanley Benedict
Charles D. ...

Commissioners