

Decision No. 28387

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
McCLOUD RIVER RAILROAD COMPANY to)
acquire the assets and franchises)
of its wholly owned subsidiary,) Application No. 20267
McCLOUD TRANSPORTATION CO., an)
automobile passenger and baggage)
line operated between Mt. Shasta and)
McCloud, California)

BY THE COMMISSION:

ORIGINAL

O P I N I O N

McCloud Transportation Co., a corporation, has petitioned the Railroad Commission for an order approving the sale and transfer by it to McCloud River Railroad Co., a corporation, of operating rights for the automotive transportation as a highway common carrier of passengers, baggage and express between Mt. Shasta and McCloud, California; and McCloud River Railroad Company has petitioned for authority to purchase and acquire said operating rights and to hereafter operate thereunder.

No agreement of sale appears with the application. However, applicants allege that applicant McCloud River Railroad Company owns all of the capital stock of applicant McCloud Transportation Co. and that it has been decided to eliminate said subsidiary by dissolution and to transfer all of the assets of said subsidiary to the parent corporation, and to have the business and operations of the subsidiary carried on by the parent corporation.

The operating rights herein proposed to be transferred and acquired are prescriptive and certificated rights described and granted by Decision No. 19195, dated December 27, 1927, in Application No. 14273; Decision No. 21505, dated August 30, 1929, in Application No. 15867; Decision No. 22170

dated February 27, 1930, in Application No. 16286; Decision No. 22889, dated September 20, 1930, in Application No. 16889.

We are of the opinion that this is a matter in which a public hearing is not necessary and that the application should be granted.

McCloud River Railroad Company is hereby placed upon notice that "Operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

O R D E R

IT IS HEREBY ORDERED that McCloud Transportation Co. be, and it is, hereby authorized to sell and transfer, and McCloud River Railroad Company be, and it is hereby authorized to purchase and acquire, and to hereafter operate thereunder, the automotive operating rights heretofore granted by Decision No. 19195, dated December 27, 1927, Decision No. 21505, dated August 30, 1929, Decision No. 22170, dated February 27, 1930 and Decision No. 22889 dated September 20, 1930, subject to the following conditions:

1. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission or any other rate fixing body as a measure of value of said property for rate fixing, or any other purpose other than the transfer herein authorized.

2. Applicant McCloud Transportation Co. shall within twenty (20) days from the date hereof unite with applicant McCloud River Railroad Company in common supplement to the

tariffs on file with the Commission covering service given under the certificates herein authorized to be transferred, applicant McCloud Transportation Co. on the one hand withdrawing and applicant McCloud River Railroad Co. on the other hand accepting and establishing such tariff and all effective supplements thereto.

3. Applicant McCloud Transportation Co. shall within twenty (20) days from the date hereof withdraw time schedules filed in its name with the Railroad Commission and applicant McCloud River Railroad Co. shall within twenty (20) days from the date hereof file, in duplicate, in its own name time schedules covering service heretofore given by applicant McCloud Transportation Co. which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicant McCloud Transportation Co. or time schedules satisfactory to the Railroad Commission.

4. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been obtained.

5. No vehicle may be operated by applicant McCloud River Railroad Co. unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

6. The authority herein granted for the sale, transfer and acquisition of an operating right shall lapse and be void if the parties hereto shall not have complied with all the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.

The effective date of the order herein shall be
twenty (20) days from the date hereof.

Dated at San Francisco, California, this 25th
day of November, 1935.

Leon White

M. A. Luns

M. B. Luns

Frank R. Luns