

Decision No. 33275

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
L. E. AYRES to sell and O. G. STEELE,
as receiver of Yreka Western Railroad
Company, a corporation, to purchase
automobile passenger and freight line
operated between Yreka and Etna, Cal-
ifornia.

ORIGINAL

Application No. 22634

O. G. STEELE, Receiver, and J. P. CORREIA,
by J. P. Correia, for applicants Yreka
Western Railroad Company and L. E. Ayres.

WARE & BEROL, by Edward M. Berol, for Oregon-
Nevada-California Fast Freight, Inc.,
Protestants.

R. E. WEDEKIND and F. X. VIEIRA, by F. X. Vieira,
for Southern Pacific Company and Pacific Motor
Trucking Company, Interested Parties.

CARTER, BARRETT, FINLEY & CARLTON, by Oliver J.
Carter, for Fred W. Peters, Interested Party.

RILEY, COMMISSIONER:

O P I N I O N

By this application L. E. Ayres, an individual, operating under the fictitious name and style of Etna-Fort Jones-Yreka Stage Line, seeks an order of this Commission approving the sale and transfer by him to Yreka Western Railroad Company, a corporation, of an operative right for the common carrier automotive transportation of passengers and property between Yreka and Etna, via Fort Jones, and Yreka Western Railroad Company has petitioned for authority to purchase and acquire said operative right and hereafter to operate thereunder. The sale and transfer is to be made in accordance with

an agreement, a copy of which, marked Exhibit "A," is attached to and made a part of the application.

The consideration to be paid for the property herein proposed to be transferred is given as \$3,000. Of this sum, \$1,500 is alleged by the applicants to be the value of the equipment and \$1,500 is alleged to be the value of the intangibles.

The operative right herein proposed to be transferred was acquired by L. H. Ayres by authority of Decision No. 27329, dated September 4, 1934, on Application No. 19542.

Public hearing of this proceeding was had in Yreka where testimony was taken, evidence received, the matter duly submitted on briefs subsequently filed with the Commission, and it is now ready for decision.

This application was concurrently heard, but not consolidated for decision, with Applications Nos. 22294 and 22553, in the names of Oregon-Nevada-California Fast Freight, Inc. and Fred W. Peters, respectively, now under submission to this Commission.

The Ayres' operative right had its origin in a prescriptive right established by the co-partnership of Peters and Reichman, subsequently transferred to Reichman in 1921. Reichman, in January, 1934, relinquished his right to R. G. and D. M. Baker who in turn transferred the right in September of the same year to L. H. Ayres, the current owner.

This service now consists of one round trip daily, except Sundays and Holidays, operated with one combination freight and passenger vehicle between Yreka and what is known as the Scott Valley, a rather sparsely settled territory devoted principally to mining and

agriculture and not productive of any considerable tonnage.

The record in this proceeding reveals that Ayres has been finding it increasingly difficult to maintain a service commensurate with the demands for service made upon him by his patrons. This appears to have come about because of contract and proprietary truck competition and his own inability to provide the physical facilities in the way of equipment, etc. necessary to properly and adequately perform this service. Likewise, his financial condition will not permit of his enlarging or improving his service to effectively combat the competitive factors alluded to above. In addition, he has indicated a definite desire to and has at this writing entered another line of business, leaving his automotive line in the hands of a manager. In his own words Ayres is operating a "one man business" and evidently has not found sufficient recompense forthcoming to encourage his continuance as a transportation agency.

Yreka Western Railroad Company has been long established as a rail carrier between Yreka and Montague and has had a rather stormy financial career in this territory culminating in receivership under which it has progressively improved and developed its service until in recent years it has become engaged in the operation of both a stage and truck line between said termini, in addition to its rail service. Such services, generally, have been satisfactory to, and adequate for, its patrons. Rail service is exclusively confined to carload movements at present, while all less-than-carload freight is moved either by truck or in a combination passenger and freight vehicle.

O. G. Steele, receiver for the railroad company, testified that he had been interested in the purchase of the Ayres' line for

more than two years past. His interest primarily was engaged because of the need for a feeder line into Scott Valley in order to hold for his company the existing tonnage into and out of this territory. Also, Yreka being the principal gateway to the territory now served by Ayres, he envisioned not only a preservation of existing tonnage, but also an increase of business in this territory for his company were it possible to give a more adequate and more complete service than now afforded. Mr. Steele was confident that, under his control, the Etna-Fort Jones-Yreka Stage Line would be placed in a position to reclaim tonnage into and out of this territory now going to proprietary and contract operators. Also, his proposal for the establishment of joint rates with the Southern Pacific Company and other carriers would, he alleged, further assist in this matter.

Despite its rather unimpressive past, Yreka Western Railroad Company now appears, according to this record, to be affording a fairly adequate service on its own line and, further, appears reasonably assured of success were it to be authorized to take over operation of the Ayres' line.

Protestant Oregon-Nevada-California Fast Freight, Inc. has pending before this Commission an application to serve, generally, between Sacramento and Dunsmuir and the Oregon-California State Line, via both Highways 99 and 97, including service to Yreka, among other points, as an extension and enlargement of its existing highway common carrier services, and providing further for the establishment of joint through rates with Ayres, among others. By virtue of such a proposal this protestant is interested in, and definitely concerned with, the future of the Ayres' line. In consonance

with this attitude protestant Oregon-Nevada-California Fast Freight, Inc. has suggested that in the event the transfer of this operative right is approved by the Commission it be approved on the basis of joint ownership by both Yreka Western Railroad and itself. Oregon-Nevada-California Fast Freight, Inc. further offered, in the event that Yreka Western Railroad would not accede to such a settlement, to purchase the line. This protestant has further cast doubt upon the financial ability of Yreka Western Railroad Company to successfully take over the Ayres' line and continue the operation.

Despite these offers of protestant which are based, in part, upon the granting of operating authority not now possessed, we are here concerned only with the proposal embraced by the application here pending for approval of the sale and transfer of the L. E. Ayres' operative right to Yreka Western Railroad Company. Based upon the record herein there appears to be reasonable assurance that said Yreka Western Railroad Company is willing and able to continue this service if approval of its proposed purchase is forthcoming.

Palpably the service is a necessary one for this territory and must be preserved. L. E. Ayres, the present operator, has definitely indicated his own inability and nondesire to continue this operation. Yreka Western Railroad Company, a capable operator of long standing, well liked in and familiar with the territory involved, has joined with L. E. Ayres in an application for approval to take over and operate this needed service. With respect to the position of protestant Oregon-Nevada-California Fast Freight, Inc., it appears that little would be gained by a further discussion of the various other proposals injected into this proceeding, other than to state that for the purpose of determining this matter they are without sufficient merit to justify further consideration. I recommend that the application be granted.

O. G. Steele, as receiver of Yreka Western 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 ORDERED that L. H. Ayres is hereby authorized to transfer to O. G. Steele, as receiver of Yreka Western Railroad Company, and Yreka Western Railroad Company is hereby authorized to acquire the operative rights referred to in the foregoing opinion, in accordance with the terms of the agreement marked Exhibit "A," attached to the application herein, and hereafter to operate thereunder, subject to the following conditions:

1. The authority herein granted shall lapse and be void if applicants 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.
2. 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 for any purpose other than the transfer herein authorized.
3. Applicant L. H. Ayres shall within thirty (30) days after the effective date of the order herein, and upon not less than five (5) days' notice to the Commission and the public, unite with applicant O. G. Steele, as receiver of Yreka Western Railroad Company, in common supplement to the tariffs on file with the Commission covering the service given under the operative rights herein authorized to be transferred, applicant L. H. Ayres withdrawing, and applicant O. G. Steele, as receiver of Yreka Western Railroad Company, accepting and establishing such tariffs and all effective supplements thereto.

4. Applicant L. E. Ayres shall within thirty (30) days after the effective date of the order herein, and upon not less than five (5) days' notice to the Commission and the public, withdraw all time schedules filed in his name with the Railroad Commission and applicant O. G. Steele, as receiver of Yreka Western Railroad Company, shall within thirty (30) days after the effective date of the order herein, and upon not less than five (5) days' notice to the Commission and the public, file in triplicate in his own name time schedules covering service heretofore given by applicant L. E. Ayres, which time schedules shall be satisfactory to the Railroad Commission.

5. 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.

6. No vehicle may be operated by applicant O. G. Steele, as receiver of Yreka Western Railroad Company, unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

7. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all the provisions of this Commission's General Order No. 91.

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

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 3rd day of

July, 1940.

Ray L. Riley
Frank P. Weller
Robert A. W. Weller
Justice J. C. Weller
COMMISSIONERS