

Decision No. 33708

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of YREKA)
WESTERN RAILROAD COMPANY, a corporation,)
for a certificate of public convenience and)
necessity to operate motor vehicles for the)
transportation of property over the public)
highways between Etna and Huff's Mill and)
Hjertager's Mill, California, as an exten-)
sion and enlargement of the existing opera-)
tive rights now held by applicant between)
Yreka and Etna, California, together with)
consolidation of all of said rights with)
applicant's existing operative rights be-)
tween Yreka and Montague, California.)

Application
No. 23753

ORIGINAL

- J. P. CORREIA for O. G. Steele, Receiver
for Yreka-Western Railroad Company,
Applicant.
- E. V. BARR for Charlie Snapp, Protestant.
- A. L. SCHNEIDER for Oregon - Nevada -
California Fast Freight, Inc., Pro-
testant.

BY THE COMMISSION:

O P I N I O N

By this application, as amended, Yreka Western Railroad Company, a corporation, seeks authority to establish and operate an on-call automotive service as a highway common carrier from the George M. Huff and E. J. Hjertager lumber mills, on the one hand, to Yreka, on the other hand, as an extension and enlargement of its existing right between Etna and Yreka via Fort Jones. (1)

(1) Applicant also separately operates an automotive common carrier service for the transportation of passengers and property between Montague and Yreka, in addition to its rail freight service between these points.

The proposed service is to be limited to the transportation of lumber from the Huff and Hjertager Mills which are located on the West Side Callahan Road and the East Side Callahan Road, respectively. The Huff mill is situated approximately five miles and the Hjertager mill approximately eleven miles from the town of Etna and approximately thirty-eight miles from Yreka. The purpose of the authority herein sought is to afford the two mills a direct service to Yreka for transshipment via rail car to point of final destination. Shipments are to move under joint rail and truck rates over Yreka. ⁽²⁾ Some local movement is anticipated, according to the record, from the mill points to Yreka. However, this tonnage is conjectural and appears as incidental to the primary purpose of the service which is to provide for movement through and beyond that point.

A public hearing on the application was had in Yreka before Examiner McGettigan on December 11, 1940, where testimony was received, exhibits filed, the matter submitted, and it is now ready for decision.

Charlie Snapp and Oregon-Nevada-California Fast Freight, Inc. appeared as protestants to the granting of the application. Snapp operates as a highway common carrier and as a passenger stage corporation between Etna and Gazelle via Callahan and between Etna and Somes Bay and intermediate points via Sawyers Bar and Forks of Salmon. Oregon-Nevada-California Fast Freight, Inc. possesses and operates under certificates of public convenience and necessity as a highway common carrier between the Oregon -

(2) Truck facilities of Yreka Western Railroad Company from the mills to Yreka, rail facilities of Yreka Western Railroad Company from Yreka to Montague, and thence via the Southern Pacific Company rail service.

California State Line and the San Francisco Bay area. As such, it possesses a common point of interchange with the Snapp operation at Gazelle and, through joint rates, offers service into and out of the territory here sought to be served by Yreka Western Railroad Company.

The record clearly shows that there is now and has in the past been a movement of lumber both via Yreka and via Gazelle and also indicates that this commodity has moved into and out of this territory direct by contract and proprietary truck to destinations at Los Angeles, Chico and Redwood City among other points within the State of California. With respect to the amount of timber actually controlled by the mills involved and to the tonnage actually moving or which might be expected to move, applicant estimated a movement of from three to five million board feet per year. Erling Hjertager testified that his company had moved three quarters of a million board feet of lumber since July of 1940 and that they expected to cut from two to four million board feet in the coming year. He further testified that of the lumber actually cut, one carload moved via Gazelle and six carloads via Yreka by contract truck. Some fifteen to twenty carloads remain which, he stated, would move via Yreka. The Hjertager mill, according to the witness, has a capacity of from fifteen to twenty thousand board feet per day. George M. Huff, of the Huff Lumber Company, testified that his company had cut approximately six hundred thousand board feet of lumber this year and expected to cut from four to five million board feet next year. He likewise utilized the service of contract truckers and further stated that his company had closed on approximately fifty million board feet of lumber and considered that a twenty year supply of timber was thereby available. His mill, he stated, would probably average seventeen

thousand board feet per day which he desired to move via Yreka. Both of these witnesses definitely favored movement via Yreka rather than Gazelle. However, the witness Huff was particularly concerned with rates and indicated he would not hesitate to employ proprietary trucks if his demands with respect thereto were not met.

The record further developed the fact that there are two main truck routes which have been and are being used to transport lumber from the so-called Callahan territory to rail points at Gazelle and Yreka for transshipment by rail or other transportation service to point of final destination. These are Etna to Gazelle via Callahan and Etna to Yreka via Fort Jones. Witnesses in this proceeding differed as to the relative merits of the respective routes, particularly with respect to the road conditions present on each and the effect thereof on the lumber moved in connection with its ultimate commercial value.

The particular difference appearing of record, aside from questions of time in transit and rates assessed, ⁽³⁾ was with respect to the operating conditions present in the territory under discussion. It appears that lumber should be kept reasonably clean in transit and representatives of the Huff and Hjertager interests alleged that operation to Gazelle, by reason of the road and weather conditions, was less satisfactory than to Yreka via Etna. For this reason, together with the fact that better and more complete handling facilities allegedly were available at

(3) Time in transit, according to the record, appeared comparable via either route and the question of rates manifested characteristics and presented factors not capable of solution in the instant proceeding.

Yreka, they supported an operation via the route as proposed by applicant. Charlie Snapp and Orvan Munson, of the Munson Lumber Company located near Etna, on the other hand, testified that they had moved considerable lumber via Gazelle and had no complaints as to any damaging effect upon the product by reason thereof. In addition, Snapp, a lumberman of some experience himself, stated that, in his opinion, insufficient tonnage existed to warrant the employment of equipment necessary to handle lumber shipments. This opinion was based upon his observation and experience in the territory for some years which indicated that the estimates of available timber as stated by applicant's witnesses were too high. He has on file with the Commission a tariff prescribing rates for this type of traffic and asserted that he is ready, willing, and able to transport whatever tonnage may be offered. Qualifying his holding out, however, he admitted that he would require truckload lots as a minimum and preferred to use leased rather than owned equipment for performing this service.

Applicant indicated a like attitude, explaining that the expense ⁽⁴⁾ of acquiring equipment to perform this specific service only would not be warranted unless the traffic was forthcoming principally in truckload lots.

That the personal transportation preferences of the parties are involved to a considerable degree in this matter is, we believe, apparent from this record. All involved are experienced men, both with respect to the commodity involved and the

(4) Estimated \$7,000 to \$9,000 for equipment purchase and stated he was financially able to obtain such equipment should the traffic demands warrant. The cost of operation was estimated at 30 cents per mile for a 75 mile round trip for truck and trailer (25 cents and 5 cents, respectively).

territorial, marketing and operating conditions and costs to be met in such undertakings.

The record further shows that lumber moves seasonally and generally in truck or carload lots and a more or less continuous movement in season may be reasonably expected as to day and week. No particular need, however, for definite scheduled runs is indicated and, therefore, an "on-call" service as proposed by applicant is satisfactory.

That either Yreka Western Railroad Company or Snapp could satisfactorily perform the type of service required is attested to by the past record of both carriers, which indicates that they are experienced and competent transportation agencies of considerable years standing.

According to the record, Snapp has not apparently been generally transporting the lumber output of either the Huff or Hjertager interests. These companies, as heretofore stated, have been using contract trucks, either direct or in conjunction with rail service. He has, however, satisfactorily hauled lumber for the Munson Lumber Company and others without complaint, and further indicated, although the record is not clear on this point, that he had performed transportation services for Huff and Hjertager that had not been complained of.

Any advantage accruing to the proposal of Yreka Western Railroad would appear to lie in the more complete nature of its service offer as opposed to that available via the Snapp line.

(5) Includes handling at both ends. The approximate cost is 9 cents per 100 board feet.

(6) The shipper would be required to handle the loading and unloading.

Also, the facilities available at Yreka for handling the lumber are allegedly better than those at Gazelle, although the record contains no definite evidence to warrant a conclusion that lumber could not be as expeditiously handled there as at Yreka.

However, such advantages are nullified to a certain extent if consideration is given to the personal wishes of the shippers as herein expressed. Apparently, those shippers favoring Yreka will not ship via Gazelle and, contrarily, those favoring Gazelle are just as thoroughly determined to route their traffic via that point.

No common ground upon which all parties may meet is indicated by the record and further, there is no basis in the record for determining the adequacy or inadequacy of the respective services, as the bulk of the lumber has moved by contract or proprietary truck and the other points of disagreement are personal and firmly adhered to by the respective parties with little likelihood of common interest. Therefore, there appears to be no question of diversion of tonnage in so far as the carriers and shippers here involved are concerned. This was exemplified in the testimony of both Erlene Hjertager and G. A. Huff who stated that they had used contract trucks, and with respect to the latter, consideration was being given to the purchase of their own equipment unless rates were satisfactorily adjusted. Orvan Munson, of the Munson Lumber Company, also stated that he, too, made use of proprietary trucks to a considerable degree.

In its entirety, the record is not particularly convincing as to the immediate success of this service if inaugurated. It does appear, however, that an on-call service as proposed by applicant, with equipment either leased or acquired only in event

of sufficient tonnage developing to so warrant, presents a method capable of satisfying shippers and, at the same time, affording the applicant carrier a reasonable opportunity to successfully perform an additional service in the public interest. No inimical effect with respect to the interests of the other carrier directly involved appears in prospect as he is not now transporting the tonnage available. In fact, it would appear that a stabilizing influence on transportation in this territory should result with the territory more fully served by regular carriers under certificate in lieu of the proprietary and contract operations now in use.

Under the circumstances, therefore, Yreka Western Railroad Company will be granted the authority requested for an extension of its existing operative right between Yreka and Etna via Fort Jones, for the purpose of providing services from the mills heretofore named, on the one hand, to Yreka, on the other hand.

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

Public hearing having been had in the above-entitled proceeding, evidence having been received, the matter having been duly submitted, and the Commission now being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Yreka Western Railroad Company of a highway common carrier service, as such is defined in Section 2-3/4 of the Public Utilities Act, for the transportation of lumber only, from the George M. Huff and E. J. Hjertager lumber mills located approximately five and eleven miles, respectively, southeast of the town of Etna, Siskiyou County, on county roads designated as East Side and West Side Callahan roads, on the one hand, and Yreka, on the other hand, as an extension and enlargement of and consolidated with its existing operative right between Etna and Yreka via Fort Jones.

IT IS ORDERED that a certificate of public convenience and necessity therefor is hereby granted to Yreka Western Railroad Company, subject to the following conditions:

1. The authority herein granted shall lapse and be void if applicant shall not have complied with all of 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. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.
3. Applicant shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file, in triplicate, and concurrently make effective on not less than ten (10) days' notice to the Railroad Commission and the public, a tariff or tariffs constructed in accordance with the requirements of the Commission's

General Orders and containing rates and rules which in volume and effect shall be identical with the rates and rules shown in the exhibit attached to the application in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.

4. Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five (5) days' notice to the Railroad Commission and the public, a time schedule or time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.

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

6. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant 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 of 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.

Dated at San Francisco, California, this 10th day of January, 1941.

[Signature]
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 COMMISSIONERS