

FINANCE DOCKET No. 8394
TRINITY VALLEY & NORTHERN RAILWAY COMPANY
PROPOSED CONSTRUCTION

Submitted March 30, 1931. Decided April 16, 1931

Present and future public convenience and necessity not shown to require the construction and operation by the Trinity Valley & Northern Railway Company of a proposed line of railroad in Liberty County, Tex. Application denied.

W. W. West, A. C. Havens, and P. M. Stevenson for applicant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND MAHAFFIE

BY DIVISION 4:

Exceptions were filed to the report proposed by the examiner and the case has been orally argued.

The Trinity Valley & Northern Railway Company, a carrier by railroad subject to the interstate commerce act, on July 25, 1930, filed an application under section 1 (18) of the act for a certificate that the present and future public convenience and necessity require the construction by it of a line of railroad from Cleveland in a southeasterly direction to Havens, 12 miles, in Liberty County, Tex. Permission is sought under section 15a (18) to retain excess earnings derived from operation of the proposed line. The Gulf, Colorado & Santa Fe Railway Company intervened in opposition to the applicant's proposal, but subsequently withdrew. A hearing was held at Houston, Tex., on November 28, 1930. State authorities have not made any representations in the matter.

The proposed line would have one main track laid with 52-pound re-lay rail, expected to be leased from the Southern Pacific Company. Construction costs are estimated at \$42,610. Funds for this purpose would be advanced by the South Texas Hardwood Company, hereinafter called the lumber company, with which the applicant is affiliated through common ownership of capital stock by W. W. West and associates.

The applicant was incorporated under the laws of Texas in June, 1906. It owns and operates a line extending in a northerly direction from Dayton to Fullerton, 5.17 miles, in the central portion of Liberty County. This line formerly extended northward from 170 I. C. C.

Fullerton to Lumm, in Liberty County, 12.2 miles. Abandonment of the Fullerton-Lumm segment was authorized by our certificate dated May 4, 1929, in *Abandonment of Line by Trinity Valley & N. Ry. Co.*, 154 I. C. C. 179. The remaining Dayton-Fullerton segment connects at Fullerton with the Beaumont-Houston line of the Missouri Pacific Railroad Company and at Dayton with a Southern Pacific system line between Beaumont and Houston, Tex.

Cleveland is in the northwest corner of Liberty County. This point is served by a Southern Pacific system line from Houston to Shreveport, La., and by an intersecting line of the Gulf between Beaumont and Somerville, Tex. Havens, eastern terminus of the proposed line, is about 17 miles from Fullerton, and, therefore, approximately 5 miles north of Lumm. The proposed line would have no physical connection with the applicant's existing line, nor, it is stated, would it affect the business of that line.

The lumber company owns a large quantity of hardwood timber in the vicinity of the termini of the proposed line. For the past 11 years the lumber company's mill has been located at Dayton. In the interest of more economical operation, the lumber company intends to move the mill to Havens, nearer the center of its timberlands. The purpose of the proposed railroad is to provide facilities for transporting products of the mill to the trunk-line carriers at Cleveland.

In the testimony the total amount of timber in the territory is stated to be at least 100,000,000 feet, of which the lumber company owns and controls about 70,000,000 feet. The capacity of the mill is about 12,000,000 feet a year. The lumber company's timber would furnish traffic for the proposed line for about eight years. It was testified that there is sufficient timber in the territory to extend this period to 12 or 15 years.

Annual traffic outbound is estimated at 28,000 tons of forest products for a period of eight years. Earnings from this traffic are estimated as follows: Operating revenues \$19,000 each year; operating expenses, from \$12,700 to \$14,250 a year; and net income, first year, \$1,550, second and third years, \$200, fourth, fifth, and sixth years, none, and seventh and eighth years, \$550. In addition to the outbound traffic it is anticipated that there would be handled annually over the line from 30 to 40 cars of supplies and merchandise inbound and about 300 cars of logs moving to the mill from points on other railroads. This traffic is not taken into account in the estimate of earnings because, while it is a common practice for hardwood mills to purchase logs from foreign interests, the extent as to which it will be done is problematical. The applicant states that there would be little, if any, revenues from operation of the line after the eighth year. All revenues would accrue from participation

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in divisions of through rates. It appears that at the time of the hearing the matter of divisions had been discussed but no definite arrangement made.

On an air line, Havens is about 5 miles from the line of the Gulf and about 8.5 miles from the nearest station on the Southern Pacific system. Via a route described as the natural outlet, the distance from Havens to Dolan or Rayburn, stations on the line of the Gulf, would be about 7 miles. It is contended that construction of a spur by the Gulf would not provide facilities satisfactory to the lumber company because the rate situation is such as to involve additional freight charges amounting to about \$12,000 a year to a number of destinations and that this matter can not be corrected without disturbing the entire rate structure. The Southern Pacific has not been approached with respect to the construction of a spur to Havens. There is testimony to the effect that it would be too expensive to truck the products of the mill to the railroads because of the large volume of products expected to be moved.

The applicant rents equipment from the lumber company. Establishment of the mill at Havens rather than at Cleveland would permit consolidation of the mill and logging camps, and other economies, such as shipment of finished products rather than logs from the point of origin. One crew would operate a train in logging operations early in the day and make one round trip to Cleveland and return daily. The expense of train operation would be prorated between the applicant and the lumber company on this basis. But even in the light of other considerations of more economical conduct of the lumber company's business which the proposed line would make possible, it is frankly admitted that the primary objects of operating the line in interstate commerce are to secure divisions of through rates and increase the profits of the lumber company.

There are no communities along the route of the proposed line and it is not anticipated that the line would serve any public need in the local territory. While there is an oil dome in this territory, at present no oil is being produced nor any development work being done. The applicant anticipates that with exhaustion of the timber the line would become an abandonment proposition, unless the oil field develops.

On argument stress is laid upon the fact that the applicant has been a common carrier for many years. This fact does not affect the applicability of section 1 (18) in the premises nor change the essential nature of the service performed and proposed to be performed by the applicant. We have said heretofore that we do not favor the construction and operation by independent organizations

of industrially controlled short lines to act as feeders of trunk lines, but that circumstances may justify departure from this principle. See *Operation of Lines by C. R. & E. Ry. Co.*, 94 I. C. C. 889, 897, and *Construction by R. G., M. & N. Ry.*, 117 I. C. C. 19, 21. No such circumstances are established on this record.

Upon the facts presented we find that the present and future public convenience and necessity are not shown to require the construction and operation by the Trinity Valley & Northern Railway Company of the proposed line of railroad in Liberty County, Tex., described in the application. It follows that the application must be denied.

An appropriate order will be entered.

ORDER

Entered April 16, 1931

A hearing and argument and investigation of the matters and things involved in this proceeding having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the application of the Trinity Valley & Northern Railway Company herein be, and it is hereby, denied.

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