

Decision No. 11883

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of  
M. E. FARISS for a certificate of  
public convenience and necessity to  
operate an automobile truck line for  
the carrying of freight between Sacra-  
mento on the one hand and Nevada City  
and intermediate points between Auburn  
and Nevada City on the other, but not  
including Auburn.

ORIGINAL

Application No. 8397.

Harry A. Encell and James A. Miller, for applicant.  
Jesse H. Steinhart, for Nevada County Narrow Gauge  
R.R. Co., protestant.  
C. E. Spear, for Southern Pacific Co., protestant.  
E. P. Roleson and F. E. Crandall, for American Ex-  
press Co., protestant.  
Nilon & Nilon, by Frank Nilon, for Empire Mines &  
Investment Co. and North Star Mines Co.,  
protestants.  
F. T. Nilon, for City of Nevada, protestant.  
Geo. H. Calanan, for Half Century Club of Nevada City  
and Grass Valley, protestant.  
C. R. Spickard, for McFall & Spickard, co-partners,  
doing business under the fictitious name of  
the Sacramento-Auburn-Nevada City Stage Co.,  
protestants.  
George J. Bradley, for Merchants' and Manufacturers'  
Traffic Assn. of Sacramento, protestants and  
as amicus curiae.  
Searls & Searls, by Carroll Searls, for the Nevada  
County Farm Bureau, Nevada Irrigation District,  
Idaho-Maryland Mines Co., Tonopah Mining Co.  
of Nevada, Allegheny Mining Co., Ante Up Mining  
Co., Original Sixteen to One Mine, Inc., Rain-  
bow Mine, Brunswick Consol. Gold Mining Co.,  
and Rector Brothers, protestants.  
W. E. Wright, Dist. Atty., for County of Nevada, pro-  
testant.  
M. J. Brock, for City of Grass Valley, protestant.  
E. J. N. Ott, for Nevada City Chamber of Commerce,  
protestant.  
J. E. Taylor and W. E. Wright, for Nevada County  
Development Assn., protestant.  
Jas. C. Tyrrell, for Grass Valley Chamber of Commerce  
and Quartz Parlor No. 58, N.S.G.W., protestants.

BY THE COMMISSION:

O P I N I O N

This case was heard before Examiner Eddy at Grass Valley  
on March 7th. Briefs have since been filed and the matter is now  
ready for decision.

The applicant seeks a certificate of public convenience

and necessity to operate an automobile freight service between Sacramento and Nevada City, a distance of 65.4 miles, serving Grass Valley and other intermediate points between Auburn and Nevada City but not including Auburn. Under the amended schedule submitted at the hearing applicant's truck will leave Nevada City daily except Sunday at 6:00 a.m., arriving at Sacramento at 9:30 a.m.; on the return trip the truck will leave Sacramento at 11:00 a.m., reaching Nevada City at 4:00 p.m. The application sets forth that there will be used in the service a 5-ton Pierce-Arrow truck and one 2-ton special White Truck. The Pierce-Arrow is presumably owned by M. E. Farris and the White by C. H. Barker. M. E. Farris is the wife of B. E. Farris. The latter appeared at the hearing as "agent for M. E. Farris", is to act as "superintendent of transportation" of the line, and throughout this report will be referred to as the "applicant".

Twenty-five witnesses, of whom eleven live on or near the highway between Auburn and Grass Valley, testified for the applicant. Eight of these eleven witnesses are engaged in farming. The three other witnesses have within the past four months engaged in business on the highway; two of them conduct a garage and grocery store at a point about two miles north of Auburn and the other a general merchandise store five and one-half miles north of Auburn.

The territory between Auburn and Grass Valley is said to be sparsely settled and devoted principally to stock raising with some fruit growing. One of the witnesses, who lives about two and one-half miles north of Auburn brings to that point each week five cases of eggs for shipment by express. Another farmer ships a case of eggs a week from Auburn, trading the balance of his product at that place for groceries. Some cream is produced in the territory between Auburn and Grass Valley and one witness ships out 10 gallons a week to San Francisco.

Three witnesses were interested in shipping wood from their ranches to Sacramento by truck, but no specific rate on this commodity is named in applicant's rate sheet.

Two witnesses from Nevada City testified in behalf of the applicant, a grocer and hotel manager. The grocer ships in about 44,000 pounds a month and his freight bills last year amounted to \$2530.00. The manager of the hotel testified that the truck service would be a little more convenient; the owners of the hotel property, however, appeared to protest the granting of the application. Four grocers, two butchers, two soft drink dealers and a garage owner at Grass Valley testified in favor of the applicant. Only two of these witnesses, however, receive freight in any considerable volume and one of them testified that the truck service would be a convenience and not a necessity.

The financial condition of the principal protestant, the Nevada County Narrow Gauge Railway Company, is well known, not only to the Commission but to the general public, and need not be discussed here in detail. The road operated under a deficit of \$4900. in 1920; the following year, because of unusual traffic conditions, there was a surplus of about \$2700. Valuations made by us and by the Interstate Commerce Commission show the value of the road to be approximately \$600,000. In 1920 a traction expert engaged to report upon the property recommended that, should anything occur to deprive the road of all the traffic available in the territory, the operation be abandoned and the road be scrapped. Mining is the principal industry in Nevada County and mines representing about 95 percent. of the industry are among the protestants. As will be seen from the appearances, the application is opposed not only by the Chambers of Commerce of Grass Valley and Nevada City, but by the cities themselves, also the County of Nevada; the Nevada

County Development Association; The Half Century Club of Nevada City and Grass Valley; Quartz Parlor No. 58. Native Sons of the Golden West; The Nevada Irrigation District; The Nevada County Farm Bureau and The Colfax Chamber of Commerce. Petitions opposing the granting of the application, and signed by a large number of the merchants and citizens of both Grass Valley and Nevada City, were received at the hearing. Several merchants testified that the present service of the Southern Pacific and Nevada County Narrow Gauge was adequate and satisfactory. One of these merchants brings in by freight about 50 tons a month, another from 75 to 100 tons a month, and a third between 1200 and 1400 tons a year. The representative of the Standard Oil Company also testified as to the adequacy of the present service of the rail lines. There was some testimony to the general effect that the average time required to get freight from Sacramento to Grass Valley was three days. The record shows beyond question, however, that freight delivered to the Southern Pacific Company at Sacramento prior to 4:00 p.m. on any given day ordinarily reaches Grass Valley by noon of the following day. When consideration is given to the fact that a two line haul is involved, one of which is narrow gauge, no criticism can be made as to the adequacy of the service by rail from Sacramento, and the same is true in equal degree as to the express service. No showing has been made here which would warrant the issuance of the certificate of public convenience and necessity sought by the applicant and the application will, therefore, be denied.

It will serve no useful purpose here to determine who is really the applicant for the certificate -- M. E. Farris, B. E. Farris or C. H. Barker. It will suffice to say that B. E. Farris on October, 1922 was notified that his operations between Sacramento and Grass Valley were in violation of the law; that upon receipt of that notice he so advised at least

one of his patrons and thereafter arranged to make purchases in Sacramento for his patrons, paying for these himself and charging them with the amount plus freight. Still later he made other arrangements for the use of the Pierce-Arrow Truck which he had been operating between Sacramento and Nevada City and then obtained from a Mr. Sandlin the 2-ton special White Truck, heretofore referred to. The operation of this truck by Farris as a carrier of produce proved unsuccessful and being unable to make the necessary payments on the truck, it was then sold by Sandlin to C. E. Barker. Farris, however, continued to exercise a keen interest in the operation of the truck, taught Barker's son how to run it and even made several trips on the truck himself for the purpose of obtaining data as to operating costs, etc. Although directed by Barker to call at various business houses in Sacramento for goods to be transported to Grass Valley and Nevada City, and although he was at the same time the agent of M. E. Farris who had filed with us an application to operate a freight service over this route, Mr. Farris' testimony indicates that he did not know whether the goods transported by him belonged to Barker or to the consignees thereof. It should be stated that Barker has apparently not regarded it necessary to resort even to the flimsy subterfuge just described of taking ownership of the goods and has operated practically every day between Sacramento and Nevada City up to and including the day of the hearing in clear and open violation of the law. Our order will require that Farris cease and desist from the unlawful operations in which he has been engaged.

#### ORDER

A public hearing having been held in the above entitled application, evidence submitted and the Commission being fully advised,

IT IS HEREBY ORDERED that the above entitled application be, and the same hereby is denied, and

IT IS HEREBY FURTHER ORDERED that M. E. Farris and/or B. E. Farris and/or C. H. Barker be, and they hereby are directed to discontinue operation of automobile trucks for the transportation of property for compensation between fixed termini and/or over a regular route in violation of the provisions of Chapter 213, Statutes of 1917, and amendments thereto, and

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission be, and he hereby is directed to forward a certified copy of the within Decision to the District Attorneys of Sacramento County, Placer County and Nevada County, California.

Dated at San Francisco, California, this 2<sup>d</sup> day of April, 1923.

C. J. Leary  
H. R. Branding

J. T. Whittier  
Commissioners.