

ORIGINAL

Decision No. 19306

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 SIERRA RAILWAY COMPANY OF CALIFORNIA,
 a corporation duly incorporated and
 existing under and by virtue of the
 laws of the State of California, for
 a certificate of public convenience
 and necessity to operate a motor truck
 freight service as a common carrier
 over the public highway, between the
 City of Sonora, Tuolumne County, and
 the City of Stockton, San Joaquin
 County, and between other designated
 points as specified in said applica-
 tion, all of which are situate in the
 counties of San Joaquin, Stanislaus
 and Tuolumne, State of California.

Application No. 13647

In the Matter of the Application of
 R. E. O'BRIEN and W. E. GRANT as part-
 ners doing business under the firm name
 of Moore Truck Line, for a certificate
 of public convenience and necessity to
 operate a motor freight service for the
 transportation of freight and agricul-
 tural products between Oakdale and
 Tuolumne with service to Keystone, James-
 town and Sonora, Columbia, Soulsbyville
 and Tuolumne, and all intermediate
 points.

Application No. 13708

Rowan Hardin, for Applicant Sierra Railway Company.

William Grant, for Applicants O'Brien and Grant.

L. G. Markell, for California Transit Company,
Protestant.

BY THE COMMISSION:

O P I N I O N

Sierra Railway Company, a corporation, is engaged in the operation of a railroad line extending from Oakdale to Sonora and

Tuolumne, and by its amended application has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by it of an automobile truck line, as a common carrier of freight between Stockton and Sonora, serving intermediate points east of Oakdale, but not serving any intermediates between Oakdale and Stockton, the route between these two points to be via Valley Home and Collegeville. Applicant also requests permission to operate a motor truck freight service between Sonora, on the one hand, and Columbia, Soulsbyville and Tuolumne on the other hand.

Applicant proposes to charge rates and to operate on a time schedule in accordance with Exhibits "1" and "3" accompanying said application, and to use as equipment two 2½-ton White trucks.

R. E. O'Brien and W. E. Grant also petition the Railroad Commission for an order declaring that public convenience and necessity require the operation by them of an automobile truck service for the transportation of freight between Oakdale and Tuolumne with service to Keystone, Jamestown, Sonora, Columbia, Soulsbyville and Tuolumne.

It is alleged in their amended application that these applicants are operating as co-partners under the firm name and style of Moore Truck Line and that they seek this certificate as an extension of present operative rights between Stockton and Oakdale, naming certain specified intermediate points.

The record shows that Grant has no present interest in the operative rights now exercised by O'Brien between Stockton and Oakdale, nor in Moore Truck Line. Originally, a certificate was issued to one E. W. Moore to operate between these two

points and as a result of a series of transfers R. E. O'Brien became, and now is, the sole owner of such operative rights. According to the evidence, Grant has only a prospective interest in the instant application in that he is to be associated with O'Brien in the event that a certificate should be granted to these two applicants. Their application, therefore, cannot be considered in any relation to the present operative rights held by O'Brien between Stockton and Oakdale.

Applicants propose to charge rates and to operate on a time schedule in accordance with Exhibits "A" and "B" attached to said application, and to use the equipment described in Exhibit "C."

A public hearing on said applications was held before Examiner Gannon at Sonora at which time the matters were consolidated for the purpose of receiving evidence and they are now ready for decision.

Considering first the evidence introduced in support of the application of Sierra Railway Company, we find the chief engineer of said company testifying that the proposed service is intended to be supplementary to the present rail service, and is primarily designed to effect store-door delivery of groceries, fruits, vegetables, ice cream and dairy products. The merchants of Sonora had expressed themselves to the witness as desiring such service in addition to rail service now rendered by applicant company. In his opinion, the proposed service would not be detrimental to the rail service, which consists of daily trains carrying freight and express from Stockton to Jamestown, Sonora and Tuolumne. This service brings shipments to Sonora too late in the day to meet the requirements of merchants who are, in many instances, sending their own trucks to

get delivery of goods consigned to them.

Three merchants, two from Jamestown and one from Sonora, testified, in effect, that the proposed service would be a benefit in that it would result in an earlier delivery of goods. The bulk of their groceries come either by rail or privately owned trucks from Stockton, and they rely upon itinerant peddlars for fruits and vegetables. Instances were cited of long delays in getting goods from Stockton even on telephonic orders. Truck service would save at least a day and a half in deliveries.

The manager of an orchard company at Sonora testified that he is a shipper of cider, vinegar and similar products, with principal markets in the San Joaquin and Sacramento valleys. He ships no freight by rail, but operates five trucks of his own. The proposed service would be a great convenience, he testified, permitting him to discontinue the use of his own trucks to Stockton. Rail service is satisfactory from San Francisco, but impracticable from Stockton.

Two other witnesses appeared in support of the railway company's application. The superintendent of the company testified as to freight and express movements over the rail line. Freight is delivered to Sierra Railway by the Southern Pacific Company, and leaves Oakdale about nine o'clock A.M., reaching Sonora between four and five o'clock and Tuolumne at seven o'clock of the same day. Service eastbound is daily. Westbound service is three times per week, leaving Tuolumne at nine-thirty A.M. and reaching Oakdale about six P.M. Express shipments, westbound, leave Tuolumne at seven A.M. and arrive at Oakdale at nine-forty A.M. Eastbound shipments leave Oakdale at one-five P.M. and reach Tuolumne at three fifty-six P.M. Witness considered freight service adequate for ordinary grocery shipments, but believed merchants desired

truck service between Stockton and the terminus of the rail line.

The general manager of the railroad testified that the applicant company was financially able to establish and maintain the proposed service.

We come now to a consideration of the evidence offered in support of the application of O'Brien and Grant. The first witness, a druggist of Tuolumne, testified that he gets the bulk of his goods from Sacramento by rail. Shipments leave Sacramento at four P.M., arriving in Stockton the next morning, and eight or nine days are consumed in transporting such shipments from Stockton to Sonora. In his judgment motor freight service would insure a prompter delivery. Asked by counsel for O'Brien and Grant which application he would favor, witness replied: "Whichever one would give us the best service."

Another witness who conducts a grocery business at Tuolumne likewise complained of delay in getting shipments out of Stockton, and testified that he would patronize a motor truck service regardless of which applicant was granted a certificate. Three other witnesses gave similar testimony, their complaints in the main being directed against the present slowness of service out of Stockton. All favor the establishment of auto truck service as the solution of their difficulties in this regard.

The final witness was applicant O'Brien himself, who stated that he is now conducting a motor truck service between Stockton and Oakdale. He is a practical, experienced truck driver and is prepared and able to add to his present equipment should the Commission consider favorably the application in which he is interested. He made some investigation of the proposed field and found little objection to truck service. He proposed to give a one-day service on freight deliveries.

out of Stockton to Sonora and adjoining towns.

We are satisfied after a full and careful consideration of all the evidence in this proceeding that public convenience and necessity require the establishment of a motor truck freight service in the territory sought to be served. There exists a practical unanimity of opinion favorable to the establishment of the proposed service with little or no choice/^{as} between the respective applicants. We are also satisfied that only one truck line is necessary to meet the demands of freight traffic, and we are therefore confronted with the necessity of determining which of said applicants is entitled to a certificate of public convenience and necessity, since both applicants seek authority to operate over similar, if not identical, routes.

The record indicates that both applicants are fully capable of meeting all the obligations demanded by a certificate of public convenience and necessity and that in experience, ability and financial responsibility there is no material difference between them.

For a quarter of a century applicant Sierra Railway Company has endeavored, to the best of its ability, to serve the community extending east from Oakdale and into Tuolumne county. It is presumed to be permanently in the transportation business in this territory in which the other applicant has no established operation. As was said by counsel for an electric railroad in a recent application before this Commission:

" * * * * * That position necessarily carries with it a complete willingness, as the community develops, to extend its lines and increase its service and facilities to meet these different situations as they arise." (Decision No. 18717).

Applicant Sierra Railway Company, realizing the inadequacy of its present rail service, has voluntarily and in good faith offered to supplement such service with a motor truck operation which will adequately meet the demand for a more prompt transportation of freight shipments into the territory here involved. It was not forced into making the application by reason of the filing of a prior application by a threatened competitor. On the contrary, it displayed a commendable regard for the public necessity by offering to supply a service which will undoubtedly meet all requirements.

From a careful consideration of the evidence in this proceeding we are satisfied that better service can be rendered to the public in this instance by Sierra Railway Company than by O'Brien and Grant. The advantage to merchants of dealing with one transportation company, and their ability to receive deliveries either by rail or truck line, as their needs may require, is quite apparent.

We have concluded, therefore, and hereby find as a fact that applicant Sierra Railway Company is entitled to a certificate of public convenience and necessity to operate a motor truck freight service in accordance with its Application No. 13647 and that the application should be granted, and that Application No. 13706 should be denied.

An order will be entered accordingly.

O R D E R

A public hearing having been held in the above entitled applications, the matters having been duly submitted, the Commission being now fully advised, and basing its order on the conclusions and findings of fact as appearing in the opinion which

precedes this order,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by Sierra Railway Company of California of an automobile truck service for the transportation of freight between Stockton and Sonora, serving intermediate points east of Oakdale but not serving any intermediate points between Stockton and Oakdale, the route between these two points to be over the regular highway via Colledgeville and Valley Home; also between Sonora, on the one hand, and Columbia, Soulsbyville and Tuolumne on the other hand; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such service be, and the same is hereby granted to Sierra Railway Company of California, subject to the conditions hereinafter set forth:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from the date hereof.
2. Applicant shall file, in duplicate, within a period of not to exceed twenty (20) days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty (60) days from the date hereof.
3. 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 secured.
4. No vehicle may be operated by applicant herein 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.

IT IS HEREBY FURTHER ORDERED that the application of R. E. O'Brien and W. E. Grant be, and the same is hereby denied.

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

Dated at San Francisco, California, this 6th day of February, 1928.

Leon Whisell

C. C. Seamy

Frank W. Grant

Phos & R. Grant

M. M. C. C.
Commissioners.