

Decision No. 21123

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of OSCAR SCHNEIDER, WALTER SCHNEIDER, and FRANK SCHNEIDER, doing business under the firm name and style of SCENEIDER BROS., for a certificate of public convenience and necessity to operate an auto truck line, for the transportation of property, for compensation, between Sacramento and Nevada City, and intermediate points, via Auburn and Grass Valley, California, in conjunction with and as an extension of the service now being rendered by applicant between Sacramento and Auburn and intermediate points.

ORIGINAL

Application No. 11332.

Sanborn & Roehl and DeLancey C. Smith, by Arthur B. Roehl, for Applicants.

Nilon, Hennessy & Kelly, by Lynne Kelly, and Bacigalupi, Elkus & Salinger, and Frank B. Austin, for Protestants Nevada County Narrow Gauge Railroad Company, Empire Mines and Investment Company, North Star Mines Company, Idaho-Maryland Mines Company, Brunswick Consolidated Gold Mines Company, Original 16 to 1 Mining Company; Murchie Mines Company, Western Consolidated Mines, Inc., Arctic Trustees, formerly Arctic Mining & Power Company; Grass Valley Chamber of Commerce and the City of Grass Valley.

W. S. Johnson, for Protestant Southern Pacific Company.

Edward Stern, for American Railway Express Company, interested party.

SEAVEY, COMMISSIONER:

OPINION ON REHEARING

In the original application filed in this proceeding, Schneider Bros., operators of a certificated automotive trucking service between Sacramento and Auburn, sought authority to extend

their operations so as to include service between Auburn, Grass Valley and Nevada City. An amendment to this application fixed the northern terminal of the proposed extension at Forest Springs service station, a point about five miles south of Grass Valley. By Decision No. 20504 the Commission authorized Schneider Bros. to extend their service to Forest Springs. An application for rehearing was filed by Nevada County Narrow Gauge Railroad Company (a protestant at the original hearing), which operates between Colfax and Grass Valley and Nevada City. Joined with Nevada County Narrow Gauge Railroad Company in the petition for a rehearing were the Chamber of Commerce of Grass Valley, the municipality of Grass Valley and a number of mining concerns. The petition for rehearing was granted by the Commission on December 14, 1928. The rehearing was conducted, additional evidence taken, and the matter submitted on briefs. It is now ready for decision.

The petition for rehearing was based principally on the ground that diversion of tonnage to the truck line would result in irreparable damage to the Nevada County Narrow Gauge Railroad and imperil its very existence because of loss of revenue. Stress was also laid by petitioners on the claim that they were taken by surprise by what they designated as the "last moment" amendment, and at the time unable to properly present their views in opposition thereto. The contention of applicants is that because applicants' proposed line does not directly parallel that of the railroad, and because the proposed terminal is four miles from Grass Valley, the nearest point reached by the railroad, there can be no competition.

Applicants propose to operate one round trip daily between Sacramento and Forest Springs Service Station, to charge rates in accordance with a schedule marked "Amended Exhibit A", and to use as equipment one 2½ ton and one 3 ton White Truck, both equipped

with pneumatic tires.

Applicants rely as justification for the granting of the desired certificate on the following alleged facts: that there is now no available public transportation between Auburn and Forest Springs Service Station; and that there is a necessity for the establishment of the proposed service.

A. L. Schneider, employed as manager for applicants, testified regarding the present investment and operations of applicants, the investment being approximately \$88,000, ten trucks and six trailers being operated. This witness had made an investigation regarding the business available on the proposed extension and estimates 1500 tons per year as now available from which a revenue of approximately \$10,000 would be derived. A terminal station is proposed at Forest Springs Service Station and arrangements are to be made with garages and service stations at points on the highway between Auburn and the terminus of the line where shipments may be received or delivered, thereby accommodating patrons who reside at points away from the highway. The witness estimates that 250 families would be served by the proposed extension, all of whom are located within $2\frac{1}{2}$ miles of the Auburn-Grass Valley highway, and who have no available transportation service. A large number of witnesses living in the territory involved testified as to the probable tonnage which would be available for shipment over the proposed line.

It would appear from exhibits presented by protestants that the amount of freight and express consigned directly to or from residents of the territory proposed to be served by Schneider Bros. would approximate 15 tons a year. A number of Grass Valley merchants, appearing as witnesses, estimated the tonnage shipped by them to the territory involved at 120.65 tons per year, making a total of approximately 136 tons moving into the territory. This does not include tonnage of merchants who testified as to business

done with the district but who described it as considerable rather than in terms of tons. A representative of the Southern Pacific testified that investigation showed a total of 990 tons a year moving from Sacramento to Grass Valley, an average of 3.3 tons per day. According to protestants, approximately 13.7% of this freight is distributed in the territory sought to be served by the truckmen.

In its original decision in this matter (No. 20504) the Commission estimated that the prospective tonnage for the truck line would approximate 1000 tons yearly. On rehearing, evidence was offered indicating an increase in this amount of approximately 400 tons, exclusive of certain special commodity shipments.

Unquestionably, the establishment of the proposed truck line will meet a certain measure of necessity and convenience for the residents of the territory above Auburn not served by the railroad. This territory is not very thickly populated, particularly that part north of Bear River. The territory between Auburn and a point near the north bank of Bear River (Higgins Corner) is more thickly settled, however, and there appears to be a necessity for a public transportation service between Auburn and Higgins corner, a distance of approximately 12 miles, in which there are some 23 prospective shippers whose shipments will total approximately 900 tons yearly, exclusive of wood shipments.

In arriving at this conclusion the fullest consideration has been given to the situation confronting the rail line. The maintenance of this line is of vast importance to the territory it serves, and its tonnage should not be impaired. Faced with an abandonment of the rail line, consequent upon an order of this Commission permitting it to discontinue because of continuously shrinking receipts, loyal citizens of Grass Valley and Nevada City assumed the burden of operating it, sensing the value of the rail service to the communities between which it operates and the territory it serves. In 1928, due undoubtedly to the efforts of the community

committee which took over the line and the merchants who pledged their support, the rail line showed a net operating income of \$958.07. Previous years showed heavy losses. To grant authority to Schneider Bros. to extend their service to Higgins corner instead of to Forest Springs Station will, in my opinion, largely satisfy the transportation needs of the territory involved without making any inroads upon the tonnage available to the rail line. I recommend that such a certificate be issued.

Oscar Schneider, Walter Schneider and Frank Schneider, co-partners doing business under the firm name and style of Schneider Bros., are 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.

ORDER ON REHEARING

Rehearing having been held in the above entitled proceeding and the matter having been duly submitted,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by Oscar Schneider, Walter Schneider and Frank Schneider, co-partners doing business under the firm name and style of Schneider Bros., of an automobile truck line, as a common carrier of freight, between Auburn and a point on the Auburn-Grass Valley highway known as Higgins Corner and intermediate points, such operation to be conducted in addition to and as a portion of the operation now con-

ducted by said applicants between Sacramento and Auburn and intermediate points under the authority contained in this Commission's Decision No. 11745 on Application No. 8747, as decided March 3, 1923, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such a service be and the same hereby is granted to Oscar Schneider, Walter Schneider and Frank Schneider, co-partners doing business under the firm name and style of Schneider Bros., subject to the following conditions:

1. Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.

2. Applicants 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 thirty (30) 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 applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that Decision No. 20504 heretofore issued in the above entitled proceeding be and the same is hereby abrogated.

IT IS HEREBY FURTHER ORDERED that in all respects other than as specifically set forth in this opinion and order Application No. 11332 be and the same is hereby denied.

For all purposes, other than hereinabove stated, the effective date of this order is hereby fixed as twenty (20) days from the date hereof.

The opinion and order herein are hereby made the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of May, 1929.

Thomas D. Lott

C. L. Seaman

Ernest A. Smith

Leon Whitely

W. J. Carr
COMMISSIONERS.