

ORIGINAL

Decision No. 30034

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of RALPH SPEER for a certificate of public convenience and necessity to operate automotive truck service as a common carrier between Sacramento, Lincoln and Chico, on one hand, and Bella Vista, Ingot, Round Mountain, Montgomery Creek, Burney, Fall River Mills, McArthur, Nubleber, Bieber and Adin, and intermediate points, on the other hand.

Application No. 21182

HARRY A. ENCELL & WALTER P. EVANS, for Applicant.

L. N. BRADSHAW & J. L. AMOS, JR., for Western Pacific Railroad Company and Sacramento Northern Railway, Protestants.

ANSEL W. WILLIAMS, for Southern Pacific Company and Pacific Motor Transport Company, Protestant.

EDWARD STERN, for Railway Express Agency, Inc., Interested Party.

BY THE COMMISSION:

O P I N I O N

This is an application by Ralph Speer, an individual, for a certificate of public convenience and necessity to establish and operate an automotive service as a highway common carrier of property between Sacramento, Lincoln and Chico, on the one hand, and Bella Vista, Ingot, Round Mountain, Montgomery Creek, Burney, Fall River Mills, McArthur, Nubleber, Bieber and Adin, and points intermediate to Bella Vista and Adin, on the other hand. The proposed service would be conducted twice weekly, leaving Sacramento at 5 P. M. Mondays and Thursdays, arriving at Adin at 5 P. M. on Tuesdays and Fridays, with the return trip in equivalent

time on alternate days. A 10 ton truck with van-type body would be used.

Public hearings in the above entitled matter were conducted by Examiner Elder on Friday, June 4, 1937, at Bieber, California, and on Friday, June 25, 1937, at Sacramento, California. The Western Pacific Railroad Company, Sacramento Northern Railway, Southern Pacific Company and Pacific Motor Transport Company appeared, through counsel, as protestants.

Applicant testified that he is now and has, for the past six years, been operating as a contract carrier between the points enumerated in his application. Since December, 1935, applicant has been the holder of a Highway Contract Carrier's permit and his testimony further disclosed that he has been regularly serving shippers and receivers of freight in some twelve or thirteen points along the route set forth in his application, assertedly as a highway contract carrier. He also has a permit to operate as a Radial Highway Common Carrier, according to Commission records, which he testified that he does not use.

The only direct service by a certificated common carrier between the points involved is the rail service of Western Pacific Railroad Company and its subsidiary, Sacramento Northern Railway, between Sacramento and Bieber, the station of the railroad being located three miles from Bieber at Nubleber. The service includes a daily l. c. l. merchandise car leaving Sacramento at 5:30 A. M. and arriving at Bieber at 6:30 P. M. the same day. This affords second morning delivery at Bieber, which is the same as applicant's proposal. Refrigerator car service is supplied in severe weather, and throughout the year a refrigerator car leaves Sacramento each Tuesday and Friday morning, giving third morning delivery. Second morning delivery by re-

frigerator car is available at any time for shipments of 5,000 pounds. From Chico to Bieber there is no through service by Sacramento Northern and Western Pacific, but a connection at Oroville is available for second morning delivery at Bieber. Traffic to several other points applicant proposes to serve has been transported by Sacramento Northern and Western Pacific as far as Bieber, being hauled the remaining distance to destination by the receiver or other carriers.

Southern Pacific Company has a service from Sacramento to Redding daily, from Chico to Redding bi-weekly, and from Lincoln to Redding via Sacramento daily. At Redding connection might be made with the certificated truck line of Roy Marks to points on the Redding-Alturas lateral as far as Pittville or, for packages not exceeding 100 pounds, with the passenger and express stage of the Alturas-Lakeview Stage Line; but there is no evidence that the service is so used and there are no joint rates on file.

In support of his application, applicant produced Morris Bethel, proprietor of a general merchandise store at Fall River Mills; Oliver P. Smelcer, proprietor of a drug store and soda fountain at Adin; Ben Sawtelle, a grocer and liquor dealer at Adin; William H. Rodman, proprietor of an electrical store at Fall River Mills; George J. Harper, who has a general merchandise store at Adin; A. A. Karns, proprietor of a liquor store, restaurant and soda fountain at Bieber; John Thornhill, hotel proprietor at Bieber; John Klein, garage man of Bieber; William P. Geary, of McKesson Kirk Geary, wholesale dealer in drugs and liquors, at Sacramento; Joseph Rohrer, wholesale fruit and produce dealer of Sacramento; W. A. Hartford, of Levy & Zentner, wholesale produce dealers, at Sacramento; and others. All of these witnesses testified they now receive applicant's service rendered, as applicant claims, as a con-

tract carrier, that the service is necessary and convenient to them, and that they desired the granting of the application. The only reason given by any of them why applicant should be certificated in preference to operating as a contract carrier was that, when certificated, he could not discontinue the service without the Commission's authority.

W. J. Stone, manager of the transportation and industrial department of the Sacramento Chamber of Commerce, also testified in favor of the application for the same reason. It is noteworthy that no witness was called by the applicant who was not already either shipping or receiving over applicant's line and hardly one offered any other reason than that just stated to justify the granting of the certificate. Witness Klein, the Bieber garage man, stated the truck service was quicker than the rail (which applicant's proposed schedule does not confirm); and Stanley A. Yore, sales manager for Borden's Capital Dairy, which ships ice cream via applicant, and W. A. Hartford, above mentioned, said there was no other satisfactory carrier for their companies' goods into this territory.

Witness Stone and B. O. Roberts, a wholesaler liquor dealer of Bieber, testified the rail service to Bieber and Nubleber is adequate, and there is no contrary evidence.

Upon consideration of the record before us, we are constrained to reach the conclusion that if any public convenience or necessity for the proposed service exists, it has not been shown in this proceeding. Applicant has not sustained the burden of proof. We are not prepared to hold that the mere desire of the patrons of a contract carrier to receive identical service from the same carrier under a certificate constitutes evidence of public convenience and necessity for a highway common carrier operation. If any of applicant's present patrons

have an actual need for his service, that need, it appears, is already being adequately satisfied by applicant's operation under this contract carrier's permit. If any one who is not receiving applicant's service needs it, that fact has not been made to appear. The application must be denied.

O R D E R

Application No. 21182 of Ralph Speer having been duly heard and submitted for decision, and the Commission now being fully advised in the premises; on the basis of the conclusions and findings in the preceding Opinion,

IT IS HEREBY ORDERED that said application be and it is hereby denied.

Dated at San Francisco, California, this 9th day of August, 1937.

[Signature]

Frank R. Weber

Ruth Wakeford

Ray L. Kelley

Commissioners.