

Decision No. 30072

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
L. P. KERNER, JR., doing business under
the fictitious name and style of
KERNER MOTOR COMPANY, for a certifi-
cate of public convenience and neces-
sity to operate as a Highway Common
Carrier between San Francisco, Oakland,
Alameda, Piedmont, Emeryville, San
Leandro, Paraffin, Berkeley, Albany,
Stege, El Cerrito, Richmond, San
Pablo, Oleum, Martinez, Avon, Port
Chicago, Nichols, Shell Point and
Pittsburg, on the one hand, and Rio
Vista, Isleton, Ryde, Walnut Grove,
Locke, Vorden, Courtlandt, and Clarks-
burg, on the other.

ORIGINAL

Application No. 20943

REGINALD L. VAUGHAN, for Applicant L. P. Kerner, Jr.

MCCUTCHEON, OLNEY, MANNON & GREENE, by F. W. Mielke,
for The River Lines, Protestant.

SOUTHERN PACIFIC COMPANY, PACIFIC MOTOR TRUCKING COMPANY
& PACIFIC MOTOR TRANSPORT COMPANY, by A. S. Williams,
Protestant.

SACRAMENTO NORTHERN RAILWAY, by J. L. Amos,
Protestant.

BEVERLY GIBSON, doing business as RIVER AUTO STAGE, by
C. Gibson, Protestant.

RAILWAY EXPRESS AGENCY, INCORPORATED, of CALIFORNIA, by
Ed Stern and R. S. Elliott, Protestant.

SACRAMENTO CHAMBER OF COMMERCE, by W. G. Stone,
Interested Party.

RILEY, COMMISSIONER:

O P I N I O N

In this proceeding the applicant, L. P. KERNER, JR.,
seeks a certificate of public convenience and necessity for
the transportation of all classes of property between San

Francisco, Alameda, Piedmont, Emeryville, San Leandro, Paraffin, Berkeley, Albany, Stege, El Cerrito, Richmond, San Pablo, Oleum, Martinez, Avon, Port Chicago, Nichols, Shell Point and Pittsburg, on the one hand, and Rio Vista, Isleton, Ryde, Walnut Grove, Locke, Vorden, Courtlandt, and Clarksburg, on the other hand.

Applicant proposes an on call service daily except Sundays and holidays.

Public hearings were held at San Francisco, Rio Vista and Walnut Grove. The matter having been submitted is now ready for decision.

The applicant called twenty-five public witnesses, fifteen from Rio Vista, four from Walnut Grove, four from Isleton, and one each from Ryde and Locke, who testified as to their various needs and desires for the proposed service. The testimony was almost entirely directed to east-bound movements, the total monthly aggregate of which does not exceed 50,000 pounds.

The protestants called seven public witnesses and it was stipulated that the testimony of seven others would be substantially the same.

At the present time the applicant is operating a certificated highway common carrier service for the transportation of fresh asparagus, fresh fruits and vegetables from various points in the Sacramento Delta region, on the one hand, to Oakland and San Francisco on the other hand. The record shows that in the conduct of this operation the applicant is now using seven trucks and two trailers. The arrival time at San Francisco Bay points is before four o'clock A. M.

Applicant proposes to avail himself of the facilities

of local San Francisco and Oakland truck operators with whom he has made tentative arrangements for the pick-up of east-bound shipments. These shipments are to be accumulated at the terminals of such operators, at which places applicant's line haul trucks will make pick-up for movement to destination, beginning deliveries at Rio Vista by seven o'clock A. M.

The rates proposed by applicant are on a parity with those of the River Lines between the same points.

A number of applicant's witnesses testified as to their desires for an earlier morning store-door delivery than they are receiving from the present carriers. The applicant's proposal is based almost entirely upon the claim that he can furnish these earlier deliveries, particularly at Rio Vista. Applicant called an operating witness, a former employee of The River Lines, who testified to the numerous late arrivals at Rio Vista of the boats of said line, estimating that such late arrivals occurred approximately two-thirds of the time. The record quite singularly shows that during the period January 1, 1936 to October 30, 1936, inclusive, and from February 10, 1937 to May 15, 1937, inclusive, the boats of The River Lines arrived as late as seven o'clock A. M. only sixteen times. Three of these late arrivals were as late as eight o'clock A. M., one of them being due to the grounding of one of The River Lines' boats. (Exhibits 17 and 18.)

Most of applicant's witnesses, seemingly unaware that a store-door delivery service had been inaugurated by The River Lines during June, 1936, expressed a desire for such a service. The record shows that a number of these witnesses had actually received such delivery service.

The River Lines operates a fleet of diesel-powered vessels between San Francisco Bay points and Sacramento and intermediate points, as well as to other points not involved herein. Shipments destined up stream are received at San Francisco Bay points up to three o'clock P. M. for delivery at Sacramento Delta points the following morning. The applicant proposes to accept shipments up to five o'clock P. M. at San Francisco Bay points for delivery at the same Delta points the following morning. It appears from the record that this later receiving time would practically eliminate all objections relative to the adequacy of the present vessel service.

W. G. Stone, Traffic Manager of the Sacramento Chamber of Commerce, testified that said chamber was vitally interested in any action taken by the Railroad Commission that would tend to impair the present terminal service provided by The River Lines. Mr. Stone was apprehensive that if the proposed operation were authorized it might divert sufficient less carload tonnage to impair the ability of the protestant, The River Lines, to render service on carload shipments in connection with coast-wise, intercoastal and foreign shipments. He asserted that the ability of The River Lines to render such carload service makes available to Sacramento and considerable contiguous territory a saving in transportation costs of from one to two dollars a ton. Mr. Stone further asserted that many industries had been developed and established at Sacramento and river points upon the basis of intercoastal terminal rates established in 1933 in connection with water transportation.

In addition to the vessel service of The River Lines practically all of the points involved are receiving common carrier service by Southern Pacific Company, Pacific Motor

Trucking Company, Pacific Motor Transport Company, Beverly Gibson, doing business as River Auto Stages, and Railway Express Agency, Incorporated, of California.

Traffic over the Southern Pacific Company and its subsidiaries, Pacific Motor Trucking Company and Pacific Motor Transport, is handled from San Francisco to Sacramento, thence to river points, as far south as Isleton along the Walnut Grove branch.

Beverly Gibson operates a highway common carrier service between Sacramento and Walnut Grove and intermediate points. In addition to such operation and subsequent to the submission of this proceeding, Gibson has been authorized to extend his passenger and express service, with a limitation of one hundred pounds a package from the River Delta region to San Francisco, subject to certain restrictions, which do not affect Rio Vista and points between Rio Vista and Sacramento.

Railway Express Agency, Incorporated, operates a highway common carrier service between Sacramento and Rio Vista and intermediate points in connection with its over-night rail service between San Francisco Bay points and Sacramento.

The evidence indicated that the time of delivery at the various Delta points is dependent upon the number of shipments and the order of deliveries between consignees. Any delivery requires some time and the consignee first served would have an advantage in the point of time over the consignee last served. The record clearly shows that ample and adequate service, including early morning store-door deliveries, with some rather inconsequential exceptions, is being given. The establishment of a new service into the Delta territory would merely spread the present traffic to that degree of thinness as to endanger

and further impair the ability of the present carriers to continue their operations. This is particularly true with respect to the vessel service now offered.

It is unnecessary to discuss the evidence regarding the applicant's ability to perform the service sought as the record very clearly fails to justify a finding of public convenience and necessity.

I recommend the following form of Order:

O R D E R

A public hearing having been held on the above entitled application and the matter having been duly submitted for a decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity do not require the establishment of the service proposed, and

IT IS HEREBY ORDERED that the application is hereby denied.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission.

Dated at San Francisco, California, this 28th day of August, 1937.

Walter H. Brown
Leon O. H. H. H.
Stanley H. H. H.
Ray L. Carey
Commissioners