

ORIGINAL

In the Matter of the Application of
RALPH SPEER for a certificate of
Public Convenience and Necessity to
operate an automotive truck service
as a Common Carrier between Sacramento,
Lincoln and Chico, on the one hand,
and Bella Vista, Ingot, Round Mountain,
Montgomery Creek, Burney, Fall River
Mills, McArthur, Nubieber, Bieber, and
Adin, and intermediate points, on the
other hand.

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witnesses produced by applicant were already receiving applicant's service as a contract carrier and their testimony indicated only a desire for the continuance of the same service. It was held that this did not constitute evidence of public convenience and necessity for a highway common carrier operation.

Thereafter applicant filed a petition for re-hearing which was granted by order dated September 23, 1937, "for the purpose of receiving further evidence pertaining to public convenience and necessity for applicant's proposed service." Re-hearing was held in Bieber on December 3, 1937 before Examiner Elder. Testimony of six additional witnesses was received and stipulations entered into between counsel for applicant and protestants as to the testimony of six more. The testimony of the witnesses was substantially as follows:

Thomas E. Jack, a rancher whose ranch is located two miles southeast of Bieber, testified he produces livestock, grain, dressed turkeys and chickens, live chickens, dressed meats and wool. He is not, however, at present engaged in the sheep business and "switched to cattle" last year. 2000 pounds of turkeys were marketed in Sacramento last year, but he has not shipped any grain or wool for several years. The cattle and sheep he received last year came from Montana under feeding-in-transit arrangements and on the re-sale the cattle was shipped to Manteca and the sheep to the vicinity of Dixon at the through rate from Montana. He stated the proposed service would be a convenience to him, at times a big convenience. The truck service he received in the past, which is not identified in the record, was good service "if it was quick enough."

Thomas Thenegar, Manager of a sawmill at Burney, testified that last year his company marketed lumber in Sacramento which moved principally by rail through Nubieber and that the proposed service would meet a necessity in his business. He stated the Western Pacific, however, had given good service and that if applicant proposes to charge 50¢ per 100 pounds for lumber as compared to the rail rate of 14¢ per 100 pounds he would continue to ship by rail.

George F. Sutton, who had two weeks previously entered the grocery business at Burney, testified the proposed service would meet one of the necessities of his business. He has been receiving his shipments from Redding through Roy Marks' truck and from Sacramento by a truckman named Butler, and he testified that their service is good.

It was thereupon stipulated by counsel that anyone counsel for applicant might call would testify to the same general effect as the previous witnesses from the respective communities, "independent of the contracts that they may have" with applicant.

Morris C. Bethel, a dealer in general merchandise at Fall River Mills, who testified in the previous hearing respecting shipments from Sacramento, testified that he ships about fifteen tons of wool each season and about 20 cases of eggs a week from Fall River Mills to Sacramento and that others in the vicinity of Fall River Mills also market such products there; that at the present time there is sufficient transportation to

take care of his needs, though at times he has not been able to get things out when he should have, but that a regular truck service operating on schedule approved by the Railroad Commission, would "offer a convenience and necessity in his business."

It was stipulated that Ray Ayres, William Rodman and Vard Norval of Fall River Mills would, if called, testify substantially as Bothel did with respect to transportation from Fall River Mills to Sacramento.

Norval testified that since March 1938 he has operated a meat market at Fall River Mills. He receives very little from Sacramento, but does buy some produce there. Applicant's proposed service would "conform to the necessity or convenience of the conduct of his business." His shipments from Sacramento are now transported by applicant with whose present service he is satisfied. He stated he has no need for any transportation he is not already receiving, unless it would be more deliveries than the two a week he is now receiving.

Fred W. Carpenter, who operates a garage at McArthur, testified he receives from 300 to 500 pounds of freight a month from Sacramento and applicant's proposed service would "meet convenience and necessity in the conduct of his business." He now receives his shipments via Roy Marks, who transports them from Redding. Carpenter did not know how the shipments are moved from Sacramento to Redding, but he stated Marks' present service is very good.

It was stipulated that a Mrs. Traugh, who has a general merchandise store at Adin, and Rudolph Rice, owner of Adin Hotel, would testify substantially as witnesses Harpor and Smelcer at the previous hearing. Both the latter witnesses had testified that they had shipments transported from Sacramento to Adin by applicant and that applicant's service would meet a convenience and necessity in their business.

In attempting to evaluate this evidence it should be observed at the outset that the affirmative answer given by each witness to the question whether the proposed service would "meet a convenience or necessity" or "conform to a convenience or necessity" of his business is without evidentiary value in the absence of a showing that the witnesses were actually experiencing a need for transportation service which was not being supplied or that existing methods of transportation did not adequately satisfy their convenience. The question assumes the existence of some need or desire which was not described or shown to exist at all. The burden rests on applicant to establish affirmatively that some actual public need or demand exists which the proposed service will meet and satisfy. (In re Application of Gibson 26 C. R. C. 892.)

Witness Jack's testimony was indefinite with respect to the kind and quantity of products to be shipped from his ranch as well as to whether any appreciable quantity of it would be shipped to Sacramento. Virtually nothing was shown regarding any existing service used by or available to the witness or its adequacy. There is nothing in his testimony to convincingly show any definite need or desire on his part for the proposed service.

Thenegar's testimony does not aid applicant as he said he would continue to use the rail service in view of the lower rates. Moreover he did not testify that any additional truck service is needed and stated the rail service is good.

The statements of Sutton, Bethel, Norval and Carpenter that the proposed service would meet a convenience and necessity of their business illustrates the comments made above respecting such testimony. Nothing was brought out through any of these witnesses to show what convenience and necessity for additional truck service exists, if any, which the proposed service will satisfy. Indeed, all stated that in general the service presently received is good. The most that can be gained from their testimony is that their transportation needs to and from Sacramento would be as well satisfied by applicant's proposed service as by the present means.

The record contains considerable evidence adduced by protestants tending to show the movement of traffic in the territory in question to be very light and this may to some extent explain applicant's failure to produce any evidence that existing transportation facilities are not adequate and sufficient to satisfy all public demands and requirements. Upon the present record, however, we are unable to find that public convenience and necessity for the proposed service has been shown and the application must be denied.

O R D E R

Public hearings having been held in the above entitled matter, evidence having been received, the matter submitted and the Commission now being fully advised,

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

Dated at San Francisco, California, this 29th
day of July, 1938.

Walter H. Hays

Francis R. Devlin
Raymond C. Hays

COMMISSIONERS.