

Decision No. 32317

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
(1) CLARENCE M. MARSHALL and RUFUS  
A. KING for certificate of public  
convenience and necessity to operate  
(2) passenger and freight stage serv-  
ice between Redding and Carrville. }

Application No. 22768

ORIGINAL

GLENN D. NEWTON, for Applicant.

R. B. STIMMEL, for Dave Willis, Protestant.

GEORGE MANLEY, in propria persona, Interested  
Party.

BY THE COMMISSION:

O P I N I O N

By their application, as amended, Clarence M. Marshall and Rufus A. King, co-partners, seek authority from this Commission to establish and operate an automotive service as a common carrier of passengers, baggage and property, limited to shipments of 1,000 pounds or less, between Redding and Carrville, and intermediate points, subject to the restriction that no local service shall be performed between Redding and Tower House (both points inclusive) nor between points intermediate between Redding and Tower House.

A public hearing in this proceeding was had before Examiner McGettigan in Redding, on June 27 and 28, 1939, where testimony was taken, the matter submitted on briefs duly filed with the Commission, and it is now ready for decision.

Dave Willis, whose application (Application No. 22606) for a bi-weekly freight service between Redding and Carrville and intermediate points was consolidated for hearing with this matter, protested the granting of the application, in so far as it related to the transportation of property. The protest of George Manley was withdrawn when applicants agreed to the restriction of service above described.

During the course of the proceedings, both applicants testified and also presented the testimony of nine public witnesses.

The record shows that Marshall and King, under contract with the United States Government, are engaged in the transportation of the mail between Redding and Carrville and between Redding and Eureka, respectively. In addition, applicant King conducts a service station in Redding.

Under their proposal, applicants will operate one round trip daily between termini, in accordance with the schedule shown in Exhibit "B" of the application, as amended. This schedule, of course, is the same as the mail schedule, and will necessarily be subject to any change which may be required by the Government under the contracts now held by these applicants. Rates and fares to be assessed are those shown in Exhibit "A" of the application.

From the testimony of public witnesses, it was revealed that people residing in the territory between French Gulch and Carrville are dependent to a great degree upon Redding as a marketing center. From or through Redding comes their food, clothing, drugs, mining equipment, auto parts and accessories, hay, feed, and liquors. At the present time, this large and rather sparsely settled territory

is dependent upon the "on call" service of Willis for the transportation of their freight. According to these witnesses, this service has not proven adequate for their transportation needs, particularly regarding l.c.l. movements of perishables, such as meat, poultry and produce, and it has been but slightly more satisfactory for the movement of nonperishables, although complaint was made as to the slowness of service in all respects. No public passenger transportation service is now available for the people in this area; in this respect, they are completely isolated except for dependence upon private vehicles.

As in the case of other similar districts throughout California, this section is primarily a consuming center, consequently the outbound movement of l.c.l. tonnage is very light, being wholly insufficient to warrant a daily service. The inbound traffic will not exceed five tons per week, and the daily shipments will not, in most cases, average more than five hundred pounds. From the record, it is apparent that the public in this area is in need of a daily freight service such as proposed by applicants, in addition to the "on call" service now afforded by Willis. This is particularly noticeable in the transportation of perishables, such as meat and produce, and in the movement of groceries, drugs, clothing, auto accessories, machinery parts and the like. Merchants in this area dislike, and assert they cannot afford, to maintain large stocks of goods such as they are now required to do under the present service. To avoid this, they may have recourse only to proprietary trucks, or they are compelled to patronize peddler trucks. Quite extensive use of the latter is indicated by this record. This results, however, in considerable inconvenience and expense.

Though the need for a daily service was clearly established, this does not extend to the transportation of individual heavy shipments by these applicants. It is evident that were a limit of 500 pounds per shipment imposed, the needs of the public, within this area, would be adequately served. Shipments of this character, for the transportation of which no urgency was shown to exist, may well be handled by an "on call" operator, such as Willis.

No protest was voiced against the granting of passenger operative rights to applicants; all of the public witnesses indicated the need for such a service. Though probably not more than fifty passengers a year will be carried, it is possible that with the establishment of a regular daily service, the number will be augmented, particularly during the summer months, due to the presence of many resorts in this region, providing excellent opportunities for hunting and fishing.

The precise method of operation does not appear to have been definitely determined by the applicants. It is not clear whether a through service will be conducted between Redding, on the one hand, and points intermediate between Tower House and Carrville, on the other hand, or whether passengers, baggage and freight will be transferred either at Tower House or at French Gulch. Moreover, some uncertainty existed as to the nature of the passenger facilities. Applicants will be expected to conduct a service and to provide facilities adequate in all respects for the public needs.

Upon consideration of the record in this proceeding, and giving due weight to the fact that applicants must operate daily

for the transportation of the mail and therefore can maintain the service despite the evident lack of prospective tonnage and passengers, the Commission is disposed to grant this application. Thus, applicants will be enabled to provide a regular, daily service for which the record shows, there clearly exists so definite a need.

Clarence M. Marshall and Rufus A. King 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

A public hearing having been had, evidence having been received, the matter having been duly submitted, and the Commission being now fully advised:

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Clarence M. Marshall and Rufus A. King, of an automotive service as a common carrier of passengers and baggage, as a passenger stage corporation, as such is defined in section 2 $\frac{1}{4}$  of the Public Utilities Act, and as a highway common carrier of property, as such is defined in section 2 $\frac{3}{4}$  of the Public Utilities Act, between Redding and Carrville, via Tower House and French Gulch, over and along the following route:

Via U. S. Highway No. 99 between Redding and Tower House, and via County Road between Tower House and Carrville,

subject to the following restrictions:

1. No local service shall be performed between Redding and Tower House (both points inclusive) nor between points intermediate between Redding and Tower House.
2. In the transportation of property, no single shipment in excess of five hundred (500) pounds shall be transported.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same hereby is, granted to Clarence M. Marshall and Rufus A. King, subject to the following conditions:

1. The authority herein granted shall lapse and be void if applicants shall not have complied with all of the conditions within the periods of time fixed herein, unless, for good cause shown, the time shall be extended by further order of the Commission.
2. Applicants shall file a written acceptance of the certificate herein granted within a period of not to exceed twenty (20) days from date hereof.
3. Applicants shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file, in triplicate, and concurrently make effective on not less than ten (10) days' notice to the Railroad Commission and the public, a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which in volume and effect shall be identical with the rates and rules shown in the exhibit attached to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.
4. Applicants shall file in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five (5) days' notice to the Railroad Commission and the public, a time schedule or time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.

5. 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 obtained.
6. No vehicle may be operated by applicants herein unless such vehicle is owned by said applicants or is leased by applicants under a contract or agreement on a basis satisfactory to the Railroad Commission.
7. Applicants shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No. 91.

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

Dated at San Francisco, California, this 12<sup>th</sup> day of September, 1939.

Raymond  
Frank R. Allen  
Ray H. Bailey  
M. Baker  
Justin J. Coe  
COMMISSIONERS