

Decision No. 32856

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
E. P. ARMOR, doing business as MODOC
EXPRESS, for a certificate of public
convenience and necessity authoriz-
ing him to operate as a highway common
carrier from Sacramento and Redding on
the one hand, to Adin, Canby and Alturas
on the other.

Application No. 21804

In the Matter of the Application of
LOUIS E. SMITH for certificate of
public convenience and necessity to
operate automobile truck service as
a common carrier between Sacramento,
Chico, and/or Redding, on the one
hand, and Canby, Alturas, Davis Creek,
Willow Ranch, and California-Oregon
State Line at Pine Creek, California,
and intermediate points, on the other
hand.

Application No. 21882

In the Matter of the Application of
ROY MARK for a certificate of public
convenience and necessity to operate
motor vehicles for the transportation
of property between Redding and Alturas
and intermediate points by an extension
of its present operating rights from
Pittville to Alturas and intermediate
points.

Application No. 21955

REGINALD L. VAUGHAN, for E. P. Armor

HARRY A. ENCELL, for Louis E. Smith.

BEROL & HANDLER, by Marvin Handler, for Roy Mark.

ANSEL S. WILLIAMS, JR., for Southern Pacific
Company, Pacific Motor Transport Company,
Pacific Motor Trucking Company and Railway
Express Agency, Protestants.

ANSEL S. WILLIAMS, JR., for Western Pacific
Railroad Company, as its interest may appear
in Application No. 21882 and Application No.
21804

JOHN L. AMOS, JR., for Western Pacific Railroad
Company and Sacramento Northern Railway, as
their interests may appear in Application No.
21955.

EDWARD STERN and W. W. RODEHAVER, for Railway
Express Agency, Incorporated, Protestant.

HARRY A. ENCELL, for Ralph Speer, Protestant
in Application No. 21804.

THOMAS B. RILEY, for Redding-Alturas-Lakeview
Stages, Protestant in Applications Nos.
21804 and 21882.

W. M. CASELMAN, for Colgate-Palmolive Peet
Company, Intervenor in behalf of applicant
in Application No. 21804.

F. P. KENSINGER, for Loose-Wiles Biscuit
Company, Intervenor in behalf of applicant
in Application No. 21804.

BY THE COMMISSION:

O P I N I O N

In these proceedings certificates of public convenience
and necessity are sought to operate highway common carrier services
between Sacramento, Chico and/or Redding, on the one hand, and
Alturas and certain points intermediate to or in the vicinity of
Alturas, on the other hand. (1)

The three matters were separately heard by Examiner
McGettigan. Inasmuch as the issues raised and territory involved
in each of the proceedings are similar they will be disposed of in
one decision.

(1) Armor seeks a certificate between Sacramento, Chico and Redding,
on the one hand, and Adin, Canby and Alturas, on the other hand.
Smith proposes to operate between Sacramento, Chico and Redding,
on the one hand, and Canby, Alturas, Davis Creek, Willow Ranch
and the California - Oregon State Line, near New Pine Creek, and
intermediate points, on the other hand. Mark seeks authority to
operate between Pittville and Alturas and intermediate points as
an extension and enlargement of his existing highway common carrier
operative right between Redding and Pittville.

All three applicants propose to operate three round trips per week, at least during the summer months. While neither the applications nor the record are entirely clear as to the number of trips proposed during the winter months by each of the applicants, it may be fairly inferred that two trips per week would be made by Smith and Armor and three trips per week by Mark. All propose a pick-up and delivery service.

Much of the territory sought to be served is without a common carrier service for the transportation of freight. Rail service is available to and from Alturas, Canby, Davis Creek, Willow Ranch, Pine Creek, and Nubieber. All of the territory is served by "permitted carriers" with varying degrees of frequency and apparently from the record made in these proceedings, the service afforded by the permitted carriers leaves much to be desired on the part of the shipping public. The principal complaint against the service of the permitted carriers is that it is not dependable.

Each of the applicants testified in his own behalf that he had surveyed the territory in an effort to determine the possible volume of traffic that would be available to him for transportation. The conclusions reached by each of the applicants varied considerably, and it has not been made to appear in any of these proceedings that traffic involved could best be accommodated by the services proposed or that any of such services, if authorized, could be profitably maintained.

A total of thirty-six public witnesses testified for the various applicants. These witnesses represented shippers of a great variety of commodities, including groceries, hardware, produce, paper goods, paints, glass, auto parts, sporting goods, dried fruits

and vegetables, liquor, tobacco, clothing, floor covering, feed, drugs and many other articles. Their preference for a scheduled highway common carrier service was predicated on a variety of reasons, chief among which were, the lack of dependable service by "permitted carriers," the delay in transit that has been experienced in connection with existing rail service, the prospect that fewer handlings of their freight would be involved under the proposed services and the expectation of earlier deliveries under the services proposed.

Protesting rail carriers presented the testimony of four public witnesses, a confectioner, a florist, a druggist and a garage man, all of Alturas. These witnesses expressed complete satisfaction with the services of the rail protestants.

In addition, testimony was offered by rail carrier witnesses outlining the service of those carriers as well as figures indicating the volume of the traffic transported by such carriers between such points involved in these proceedings as are served by the rail lines. Freight received by the protesting rail carriers at Sacramento during one day is forwarded to Reno, at which point it arrives the following morning. At Reno the freight destined to Alturas and Canby is transferred for transportation to Alturas. Delivery is available at Alturas at 10:00 A.M. the second day after departure from Sacramento. A further transfer is made at Alturas of freight destined to Canby which is forwarded beyond Alturas on the same train, arriving at Canby in the afternoon of the second day out of Sacramento. Freight to points on the Lakeview branch of the Southern Pacific is loaded out of Reno on a mixed train operating tri-weekly from Reno, providing a second day delivery of Sacramento freight.

The records made in these proceedings are such as to leave but little doubt that the territory involved is now without adequate and dependable transportation service and that there is a public need for a regular scheduled and dependable highway common carrier service. The records are equally clear, however, that none of the applicants has demonstrated that the particular service proposed will meet the requirements of the shipping public or that any particular service proposed, if authorized, could be profitably undertaken and maintained so as to insure to the shipping public an adequate and continuing service. While the Commission does not require the same character of showing or degree of proof as to the probable success of a public utility undertaking where private capital is involved as against capital to be raised through the sale of securities to the public at large, the Commission would be remiss in its duty to the public were it to authorize and, in a sense, encourage an undertaking which has not been shown to possess at least a fair chance of success. The burden of proof of ability to finance and maintain on a reasonably compensatory basis a public utility undertaking, such as is involved in the operation of a highway common carrier service, rests with the applicant or proponent.

The applications will be denied.

O R D E R

The above entitled applications having been duly heard and submitted and the matters being ready for decision, and the Commission now being fully advised in the premises,

IT IS HEREBY ORDERED that the above entitled applications
be and they are hereby denied.

Dated at Los Angeles, California, this 26th day of
September, 1939.

Rafaela Ruy

Carl Ruy

H. Baker

Justus F. Calver
COMMISSIONERS