

Decision No. 23127

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of }
RHODES STAGES, a corporation, for }
certificate of public convenience }
and necessity to operate an auto }
stage transportation service as a }
common carrier between Berkeley and }
Walnut Creek. }

Application No. 23127

ORIGINAL

- ROBINSON, PRICE & MACDONALD, by R. W. Macdonald,
for Applicant.
- L. N. BRADSHAW, for Sacramento Northern Railway,
Protestant.
- DONAHUE, RICHARDS & HAMLIN, by Frank S. Richards,
for Key System and East Bay Transit Company,
Interested Parties.
- HARRY SEE and E.A. McMILLEN, for Sacramento Northern
Employees Defense Committee, Interested Party.
- R. E. THOMAS, for Pacific Greyhound Lines, Interested
Party.
- FRED C. HUTCHINSON, for City of Berkeley, in support
of Applicant.
- ARTHUR H. BREED, JR. for The Moraga Co., in support
of Applicant.
- M. F. WARNER, for Orinda Improvement Association,
in support of Applicant.
- MRS. G.S. CUTLER, for the Saranap Improvement Asso-
ciation, in support of Applicant.
- F. A. MARSHALL and G. S. CUTLER, for the Walnut Creek
Chamber of Commerce, in support of Applicant.
- JOSEPH L. MORTENSEN, for Lafayette Improvement Club
and Lafayette Post, 517, American Legion, in
support of Applicant.
- T. A. GALLAGHER, for Contra Costa-Berkeley Transpor-
tation Committee, also the Lafayette Improvement
Club, in support of Applicant.
- F. A. CURTIS, for Lions Club of Lafayette, in support
of Applicant.

BY THE COMMISSION:

O P I N I O N

In this application Rhodes Stages, a corporation, seeks a certificate of public convenience and necessity for the establishment and operation of a passenger stage service for the transportation of passengers, baggage and express between Walnut Creek and Berkeley and intermediate points.

A public hearing thereon was held before Examiner Paul, on January 15, 16, and February 19, 1940, and the matter having been taken under submission on briefs which were filed on March 11, 1940, the matter is now ready for decision.

The only common carrier opposing the application was Sacramento Northern Railway. The Key System, East Bay Transit Company, Sacramento Northern Employees Defense Committee, and Pacific Greyhound Lines appeared as interested parties. A number of Improvement Associations, Chambers of Commerce, and other groups in the territory involved appeared in support of the application.

The counsel for Key System and East Bay Transit Company and the counsel for applicant entered into a stipulation that applicant would amend its application to provide that no authority would be sought to provide a local service between Berkeley and Temescal Junction and intermediate points. Temescal Junction is located near the westerly portal of the new Low Level Tunnel. The application was amended to conform to such stipulation. The counsel for Key System and East Bay Transit Company thereupon withdrew from participation in the proceeding.

Applicant now provides a seasonal passenger stage service for the transportation of passengers, baggage, and snow sports equipment between San Francisco, Oakland, Berkeley, and Albany, on the one hand, and Mineral, Tehama County, on the other hand. From the record it appears that applicant is also operating a charter car service.

In this application, as amended, applicant is requesting a certificate for the establishment and operation of an automotive passenger stage service for the transportation of passengers, baggage, and express, between Walnut Creek and Berkeley and intermediate points, via Lafayette, Orinda Junction, Orinda, and Broadway Low Level Tunnel. Service will also be provided to and from Saint Mary's College and Moraga, and all other points, on a route beginning at Lafayette, thence via Saint Mary's College and Moraga, and connecting with applicant's main route at Orinda Junction. No service will be provided for the transportation of passengers, baggage, and express having both point of origin and destination between Temescal Junction and Berkeley or intermediate points.

Applicant proposes to operate seven daily round trips between Walnut Creek and Berkeley, four of which originating at Walnut Creek and six originating at Berkeley, will operate via Saint Mary's College and Moraga. In addition, it is proposed to operate twelve trips daily, except Sundays, from Walnut Creek to Berkeley, two of which will operate via Saint Mary's College and Moraga, and eleven trips daily, except Sundays, from Berkeley to Walnut Creek, one of which will operate via Saint Mary's College and Moraga. It is also proposed to operate other schedules on Saturdays only, one schedule from Walnut Creek to Berkeley and two schedules in the opposite direction via the main route. In

addition, it is proposed to operate one schedule Saturdays and Sundays only from Berkeley to Walnut Creek. It is planned to have one stage tie up over night at Walnut Creek to run the first morning schedule leaving there at 7:05 o'clock. The first morning schedule from Berkeley is scheduled to leave at 6:35 o'clock. Under such plan applicant proposes to operate approximately nineteen round-trip schedules, the majority of which are to be daily except Sundays.

The one-way fare proposed to be charged are as follows:

Between: and	Berkeley	Temescal Junction	Orinda	Moraga	St. Mary's College	Lafayette	Walnut Creek
Berkeley	—	—	.20	.25	.25	.25	.30
Temescal Junction	—	—	.15	.20	.20	.20	.25
Orinda	.20	.15	—	.10	.15	.15	.20
Moraga	.25	.20	.10	—	.10	.10	.15
St. Mary's College	.25	.20	.15	.10	—	.10	.15
Lafayette	.25	.20	.15	.10	.10	—	.10
Walnut Creek	.30	.25	.20	.15	.15	.10	—

It is proposed to offer a round-trip fare to be sold at the rate of 180 per cent of the one-way fares. The proposed fares for children are one-half those for adults. No provision is made for commutation fares.

The rates proposed to be charged for the transportation of express shipments are those as set forth in Exhibit "A," attached to the application herein. Applicant requests to be

relieved from the minimum rates set forth in the Commission's Decision No. 31606 with respect to the transportation of shipments of express weighing not more than one hundred pounds.

A. H. Rhodes, vice-president and manager of the applicant corporation, testified that he had made an investigation in regard to the need for the proposed service, the schedules necessary to meet such need, the expected revenues to be derived therefrom, and the cost of establishing and operating such service.

He has made tentative arrangements to purchase three used Flexible Clipper stages, powered with Chevrolet engines, each of which has a seating capacity of 19 passengers. The price of each stage is \$1,400. He stated that he had received an offer to finance the purchase of such equipment and the establishment of the proposed service. The details of such arrangements were not established.

Rhodes further testified that the length of the run between Walnut Creek and Berkeley is 15.9 miles. On those schedules detouring at Lafayette and operating via Moraga the distance would be about 22 miles. On this proposal of service, as hereinbefore set forth, he estimates that his equipment would be operated 4,480 miles each week. The mile cost would be 10 cents which would amount to \$448 weekly. Such costs include drivers' wages, gas, oil, maintenance, insurance, tires, depreciation on equipment, office expenses, and miscellaneous items.

Rhodes stated that following a personal investigation of transportation needs of the territory involved, he had concluded that traffic could be developed to the extent of about 1,000 round trips each week to Berkeley from the Walnut Creek-Moraga-Orinda

district. He could not estimate the probable eastbound traffic. From such traffic he anticipates a revenue of about \$450 weekly. He also believes that weekly express traffic revenue of about \$17.50 could be developed. His total anticipated weekly revenue would thus amount to \$467.50.

Twenty-nine public witnesses testified in support of applicant's proposed service.

Six of such witnesses stated that they have a need for and would use the service if authorized and established. One of these six witnesses lives at Berkeley where he is engaged in business but maintains a summer home near Lafayette. He said that he would use the service daily, if established, although he now uses his own automobile and has never used the present public carrier service now available. Of the other five witnesses, four reside at Lafayette and one near Walnut Creek. All of them now use their own automobiles for transportation between their homes and their places of employment at Berkeley. One of these five witnesses, who resides near Walnut Creek, used public transportation for awhile, but the schedules were such that in order to arrive at his work on time he was required to leave his home at an unreasonably early hour. If the next schedule were used he would not be able to arrive at his work on time. Another witness stated that his wife, who is also employed at Berkeley, has a need for and would use the service. All but one of these five witnesses complained that the presently available common carrier services are over a route which is circuitous and inconvenient and that the combinations of fares for such services are too high. By using such services in travelling between the Walnut Creek district and Berkeley they are required

to transfer either at the intersection of College Avenue and Shafter Avenue, or at the intersection of College Avenue and Broadway (Oakland) when using either Sacramento Northern Railway's trains or stages, respectively. Between such transfer points and Berkeley local street cars must be used, the fares being either 10 cents cash or 7 cents token.

Characteristic of the testimony of the six witnesses who testified that they need the proposed service, was that of Mr. T.A. Gallagher, who resides at Lafayette and is employed at Berkeley as a representative of University of California News Service. He testified that he represents the Lafayette Improvement Club which had made some investigations in regard to the need for a passenger stage service between the points involved herein; that such Improvement Club had adopted resolutions in support of the application; and that a committee of such club had requested a number of public carriers, including the applicant, to consider the proposition of establishing a service similar to that proposed by the applicant. He also stated that he had been advised by a number of persons that in their opinions there is a need for a service similar to that proposed by applicant. Mr. Gallagher further testified that there are approximately four hundred students residing in Contra Costa County. It was his opinion that about 150 of these students reside in the Lafayette-Walnut Creek district and that most of such students now use their own or family cars, while a number of them obtain free rides from persons driving to or from Berkeley. Of the 150 students residing in the Lafayette-Walnut Creek district, it was his opinion that probably fifty or sixty reside in Berkeley during the school semesters. He further stated that if the application were granted

he would abandon the use of his own car and use the facilities of applicant.

Other witnesses, some of whom represented the Chambers of Commerce of Berkeley, Walnut Creek and Lafayette, the City Council of Berkeley and the Alameda County Board of Supervisors, and others engaged in various business enterprises in the Walnut Creek-Moraga district, expressed the general opinion that a direct passenger stage service between Walnut Creek and Berkeley and intermediate points without the need of transfer is needed and highly desirable and should be established as proposed by applicant; and that, if established, such service would be to the advantage of and encourage the growth and development of the communities involved.

Only one witness, who is engaged in the sporting goods business, testified in regard to a need for the establishment of an express service. He stated that his company needs a more frequent service between Berkeley and Saint Mary's College. He had no knowledge nor had he ever inquired as to the common carrier express facilities now available between such points.

Four resolutions which were adopted by various civic and governmental bodies were introduced in evidence in support of the application. From the record it also appears that similar resolutions were adopted by other civic groups.

In opposing the application, Sacramento Northern Railway, in brief, took the position that an insufficient showing of public convenience and necessity was made to justify the granting of the certificate applied for; that the proposed operation would be an imprudent undertaking; and that if established it would jeopardize

the present rail and stage service of Sacramento Northern Railway.

The opposition to the granting of this application was presented through the testimony of Mr. Mitchell, president of Sacramento Northern Railway, to the effect that in 1937 his company was authorized by the Railroad Commission to establish a passenger stage service between Walnut Creek and San Francisco, and intermediate points, among others, via Oakland, Orinda Junction, Orinda, and Lafayette. No direct service is provided between Walnut Creek and Berkeley. The local route of this operation intersects College Avenue at Broadway, (Oakland) at which point passengers travelling to or from Berkeley may transfer to or from the local carrier (East Bay Transit Company). Three daily round-trip schedules were originally established which were later increased. Such service is now provided, daily except Sundays, on six round-trip schedules, one of which detours to Orinda. Two of such schedules are daily, and one other operates Saturdays only. Protestant's stage service has been operating at a loss since its inception. For the eleven months' period ending November 30, 1939, such loss amounted to \$6,498.31. The cost of operating the stages was about 17 cents a mile. Such cost includes depreciation but not overhead charges. The passenger stage service to and from Orinda, which is served by a diversion from the regular route of the stages at Orinda Junction, is not as frequent as at first established. This service has been decreased because of criticism of passengers using the stage service to and from points east of Orinda Junction because of a loss of time on the journeys to or from Oakland or San Francisco. Mr. Mitchell stated that he had discussed this situation with the Orinda Improvement Club Transportation Committee, and it was decided that the Orinda passengers

would be satisfied with one morning and one evening schedule. The carrier was thus enabled to save approximately 4 minutes running time on those schedules not detouring to Orinda.

It was shown that, in addition to the stage service referred to above, Sacramento Northern Railway is providing six round-trip rail passenger schedules daily, except Sundays, between Walnut Creek and San Francisco, and intermediate points, via Oakland, Moraga, Saint Mary's College, and Lafayette. Four of such schedules operate daily. Other schedules operate Sundays only. All intermediate points are served by such schedules except that on one of them only Saint Mary's College is served and so served daily except Saturdays and Sundays. These schedules are arranged largely to suit the needs of the college.

Mr. Mitchell also stated that at one time train service was provided between Contra Costa County points and San Francisco at 40 minute intervals from 7:15 A.M. to 7:35 A.M. in response to requests therefor, on a basis of a need for such service, in order to help build up the territory contiguous thereto. A comparable evening train service was also established. This service was established in 1920 and operated until May, 1938. The traffic that was expected to develop materialized only to a small extent and in later years declined considerably until in 1938 the amount of revenue received from the operation of a train between Concord and San Francisco amounted to only \$3.52 a trip, and on the 5:45 P.M. schedule from San Francisco to Concord the revenue declined to \$4.02 a trip. Such amount included revenue from travel to and from San Francisco, Walnut Creek, Concord, Redwood Canyon, Saint Mary's College, Moraga and the Saranap territory.

Sacramento Northern Railway has operated special rail service to and from Saint Mary's College on requests to meet its needs. The experience has been that the earnings of such trains have decreased. At the present time a train leaving Saint Mary's at 2:55 P.M., destined to San Francisco, shows a revenue of only \$4.50 a day.⁽¹⁾ The use of such trains to and from Saint Mary's is considerably less than in the past.

An investigation by protestant of the points between which traffic moves disclosed that of those persons originating at Contra Costa County points and alighting from Sacramento Northern's train at the intersection of College and Shafter Avenues, 29.7% then travel in the direction of Berkeley and the remainder travel toward Oakland. The same investigation revealed that with respect to passengers using all trains of Sacramento Northern Railway and alighting at College and Shafter Avenues 34.5% continued toward Berkeley and the remainder toward Oakland.

It was shown that train service to and from points in Contra Costa County has not been paying its way, and there has been a constant decline in the public use of transportation facilities for many years in the territory served by protestant.

Mr. Mitchell also stated that the number of passengers carried by his company between Walnut Creek and points west has been steadily decreasing. This has been brought about because of the improvement in highways and the greater use of privately owned

(1) The service provided by this train is a special service for Saint Mary's only and is not shown on the public time card.

automobiles. This is particularly true with respect to commuters clubbing together and using single automobiles.

From a statement submitted by Sacramento Northern it was shown that during the months of July and September, 1939, and January, 1940, it had sold tickets for the transportation of passengers between Oakland and Walnut Creek and intermediate points via stage and rail as follows:

	<u>July</u>	<u>Sept.</u>	<u>Jan.</u>	<u>Total</u>
By Stage	1081	991	919	2991
By Rail	<u>1040</u>	<u>934</u>	<u>689</u>	<u>2663</u>
Total	2121	1925	1608	5654

The types of such tickets are as follows:

	<u>One Way</u>	<u>Round Trips</u>	<u>30 Ride</u>	<u>62 Ride</u>	<u>Totals</u>
STAGE	823	252	6	—	1081
	708	275	8	—	991
	<u>668</u>	<u>241</u>	<u>10</u>	—	<u>919</u>
	2199	768	24		2991
RAIL	695	326	5	14	1040
	550	349	8	27	934
	<u>482</u>	<u>181</u>	<u>9</u>	<u>17</u>	<u>689</u>
	<u>1727</u>	<u>856</u>	<u>22</u>	<u>58</u>	<u>2663</u>
Totals	3926	1624	46	58	5654

On the 1,624 round-trip tickets, 3,248 rides would be available. Likewise, on the forty-six 30-ride family tickets available for use within a six months' period, 1380 rides could be made. On the 62-ride individual monthly commutation non-transferable ticket, experience has shown that an approximate 80 per cent use thereof is made, or about 2,900 rides. From such analysis it appears that the approximate maximum number of passengers transported by Sacramento Northern Railway (rail and stage) between Walnut Creek and

Oakland, and intermediate points, during the periods indicated by the statement above referred to, was 11,454. The approximate daily and weekly averages were 125 and 875 passengers, respectively. Mr. Mitchell stated that the average load on the stage was ten passengers.

Mr. Mitchell stated that he had been requested by the Berkeley-Contra Costa Transportation Committee to give consideration to the proposition of establishing a direct passenger stage service between Walnut Creek and Berkeley; that a study had been made in regard to such request, and that after due consideration he informed such committee that it did not appear to him that his company "could afford to give the service."

A careful review of this record leads to the conclusion that there is a public need for a direct local passenger stage transportation service between Walnut Creek and Berkeley and intermediate points. While the record is not convincing that applicant's proposed service will provide any material margin of revenue in excess of out-of-pocket operating expenses, we must conclude that applicant should be given an opportunity to undertake the establishment and operation of such service. In reaching this conclusion we are mindful of the fact that there will be some diversion of traffic from the lines of Sacramento Northern to that of applicant. Nevertheless, this record appears to justify the conclusion that the public convenience and necessity shown for the proposed service outweighs the detrimental effect its establishment will have upon protestant's operations.

The proponents of the proposed service should clearly understand that its success or failure will depend upon the

patronage offered which must be to an extent to warrant its continued operation, otherwise such operation cannot be justified.

The application will be granted in conformity with the order herein.

Rhodes Stages is 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.

O R D E R

A public hearing having been held in the above-entitled proceeding, evidence having been received, said proceeding having been duly submitted, and the Commission now being fully informed therein,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Rhodes Stages, a corporation, of an automotive service as a passenger stage corporation, as such term is defined in Section 2½ of the Public Utilities Act, for the transportation of passengers, baggage and shipments of express weighing not more than one hundred (100) pounds on passenger

vehicles between Walnut Creek and Berkeley and intermediate points, via Saranap, Lafayette, Orinda Junction, Orinda, Saint Mary's College, Moraga, Broadway Low Level tunnel and Temescal Junction.

IT IS ORDERED that a certificate of public convenience and necessity therefor is hereby granted to Rhodes Stages, a corporation, subject to the following conditions:

1. No service may be provided locally between Temescal Junction and Berkeley and intermediate points, provided, however, that such restriction shall not apply to the movement of traffic between points within such restricted area and points without such restricted area.

2. The authority herein granted shall lapse and be void if applicant shall not have complied with all 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.

3. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.

4. Applicant 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 application in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.

5. Applicant shall file, in triplicate, 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.

6. 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.

7. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS FURTHER ORDERED that Rhodes Stages, a corporation, is hereby exempted from the requirements of Decision No. 31606, as amended, in Case No. 4246, with respect to shipments of express weighing 100 pounds or less.

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

Dated at San Francisco, California, this 18th day of

June, 1940.

Ray L. Riley
Frank A. Smith
Paul W. Baber
[Signature]

COMMISSIONERS