

Decision No. 38815

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of	)	
A. S. EIRI for certificate of	)	
convenience and necessity to operate	)	Application No. 23835
property service between San Pedro	)	
and Sacramento.	)	

WALTER T. TSUKAMOTO for A. S. Eiri, Applicant.

EDWARD STERN and W. J. MARTINDALE, by Edward Stern, for Railway Express Agency, Inc., Protestant.

E. L. H. BISSINGER for Southern Pacific Company and The Atchison, Topeka & Santa Fe Railway Company, Interested Parties.

W. G. STONE and J. E. HARRIS, by J. E. Harris, for Sacramento Chamber of Commerce, Interested Party.

BY THE COMMISSION:

O P I N I O N

In the above-entitled application, as amended, A. S. Eiri requests authority to establish and operate an automotive service as a highway common carrier from San Pedro, on the one hand, to Delano, Tulare, Visalia, Dinuba, Reedley, Fresno, Livingston, Turlock, Stockton, Lodi, Florin, Sacramento, Courtland, Walnut Grove, and Isleton, on the other hand, for the transportation of fresh and frozen fish and shrimps.

Public hearing was had before Examiner McGettigan in San Pedro February 11 and 26, in Fresno February 27 and 28, and in Sacramento March 26 and 27, 1941. Testimony having been taken and exhibits filed, the application was duly submitted at Sacramento and it is now ready for decision.

Railway Express Agency, Incorporated protested the granting of the application. Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company, Pacific Electric Railway Company, and the Sacramento Chamber of Commerce appeared as interested parties but did not actively participate.

Applicant commenced the transportation of fish between the points above named in September of 1940, purportedly as a highway contract carrier. Actually, the operation was that of a highway common carrier, as was determined in court proceedings in which defendant was enjoined, in January, 1941, from continuing such operation as a highway common carrier unless a certificate of public convenience and necessity from this Commission were first obtained. The operation has continued since that time in altered form, <sup>(1)</sup> although it cannot be ascertained from the record herein precisely what its legal status is.

During the course of the proceedings herein, applicant testified in his own behalf and also presented the testimony of <sup>(2)</sup> twenty-nine other witnesses. In addition, it was stipulated that seven other witnesses, two consignors at San Pedro and five consignees at Delano, Dinuba, and Sacramento, if called, would testify substantially the same as other witnesses supporting the application.

Applicant proposes to operate a daily service over the nine hundred mile round-trip-route leaving San Pedro at 4:00 p.m.,

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(1) Allegedly limited to three wholesale fisheries in San Pedro serving some forty retailers located at some of the points herein proposed to be served.

(2) Six shipper witnesses from San Pedro and consignees from the following points: Fresno, 5, Delano, 1, Reedley, 1, Sacramento, 6, Isleton, 2, Stockton, 3, Walnut Grove, 4, Florin, 1.

arriving at Stockton, northbound, at 4:15 a.m. and thence to river points and return to Stockton by 10:00 a.m. of the day following departure.<sup>(3)</sup>

The service proposed by applicant would be patronized principally by retail fish dealers, many of them orientals, located at the points of destination mentioned. The testimony of such witnesses reflects general dissatisfaction with the service of protestant Railway Express Agency, Incorporated, the other carrier available for this particular haul, and their preference for applicant's service which, allegedly, will be more satisfactory to them from a standpoint of time in transit, and condition of the fish, than the kind of service offered by protestant.

Applicant's all-truck service involves fewer handlings than protestant's rail-truck service, and the evidence shows this results in the fish arriving at destination in better condition than when transported by protestant. A considerable percentage of the traffic involved consists of "whole" fish for consumption raw, which, being uncleaned before shipment, is susceptible to damage from delay, multiple handling, or rough handling. Considerable complaint was made by applicant's witnesses with respect to unnecessarily rough handling of shipments by protestant's employees in standing boxes on end, dropping them, and delivering them in broken condition. There was complaint also

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(3) Railway Express Agency, Inc. offers daily, except Sunday, rail service via Pacific Electric Railway, Southern Pacific and Atchison, Topeka and Santa Fe, leaving San Pedro at 4:10 p.m., arriving at Stockton at 7:00 a.m. and Rio Vista (truck from Sacramento) at 11:25 a.m. Pickup and delivery service is available at all points except Florin and Courtland (Exhibits Nos. 1, 2 and 3).

that shipments transported by protestant arrived on occasions insufficiently iced and with the fish consequently in an inferior condition, although not actually spoiled.

The record shows that applicant proposes a considerably faster service than that of protestant, affording delivery, at the river points particularly, four hours or more earlier than protestant. This constitutes a decided advantage to those dealers who sell fish by truck at the various camps of agricultural workers located in the Sacramento Delta Region. These dealers testified that protestant's deliveries are made too late for delivery by these trucks, so that the fish must be held over until the following day. Applicant's deliveries, by contrast, will arrive early enough so the fish sold at the camps will be one day fresher than otherwise. Similarly, retail dealers in towns expressed a like preference for applicant's faster service. It was alleged by some witnesses that by employing protestant's service, it is necessary to pick up their shipments at the depots rather than wait for the regular store-door delivery in order to get the merchandise early enough to meet their requirements. There was also some complaint from such dealers of delay in receiving delivery of their shipments at the stations. Some witnesses, offered by protestant, testified to using its service with complete satisfaction and, in some cases, greater distances than here involved.

A summation of the evidence herein set forth justifies the conclusion that public convenience and necessity require the service proposed by applicant due to the need, as disclosed by the record, for a direct and expedited service for the transportation of the highly perishable commodities involved, which is not now available by the existing services. The application will therefore be granted.

Such action, however, is not to be taken as condonation of applicant's present operations, the status of which, as we have said, is questionable, if upon investigation they are found to be unlawful or in violation of the injunction above mentioned.

O R D E R

Public hearing having been held in the above-entitled proceeding, evidence adduced, the matter duly submitted, and the Commission now being fully advised therein, and it being found that public convenience and necessity so require:

IT IS ORDERED that a certificate of public convenience and necessity is hereby granted to A. S. Eiri authorizing the establishment and operation of a highway common carrier service as defined in Section 2-3/4 of the Public Utilities Act, for the transportation of fresh and frozen fish and shrimps from San Pedro, on the one hand, to Delano, Tulare, Vialisa, Dinuba, Reedley, Fresno, Livingston, Turlock, Stockton, Lodi, Florin, Sacramento, Courtland, Walnut Grove, and Isleton, on the other hand, subject to the condition that A. S. Eiri, his successors or assigns, will never claim before this Commission, or any court or other public body, a value for the authority hereby granted in excess of the actual cost thereof.

IT IS FURTHER ORDERED that, in the operation of the highway common carrier service pursuant to the foregoing certificate, the following service regulations shall be observed:

1. 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.

2. Applicant shall comply with the rules of the Commission's General Order No. 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective tariffs and time schedules satisfactory to the Commission within sixty (60) days from the effective date hereof and on not less than ten (10) days' notice to the Commission and the public.
3. Applicant shall conduct said highway common carrier service over and along the following routes subject to the authority of the Railroad Commission to change or modify them at any time by further order:

Between San Pedro and Los Angeles over Alameda Street, thence northerly over U. S. Highway No. 99, through Delano, Tulare, Fresno, Livingston, Turlock, Stockton, Lodi and Florin to Sacramento.

From Tulare over the State Highway through Visalia, Dinuba, and Reedley, returning to U. S. Highway No. 99 south of Fresno.

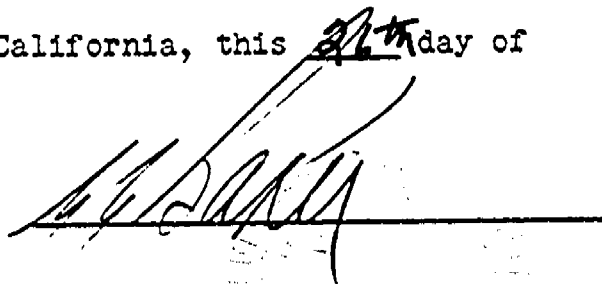
Over State Route No. 12 between Stockton and Walnut Grove.

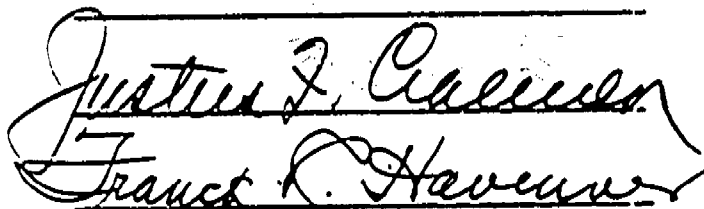
Over State Route No. 24 between Walnut Grove and Sacramento.

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

Dated at San Francisco, California, this 26<sup>th</sup> day of

August, 1941.

  
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COMMISSIONERS