

Decision No. 11924

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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ORIGINAL

In the Matter of the Application of)
 FROST & FROST TRUCKING COMPANY for)
 certificate of public convenience and)
 necessity to operate capacity load)
 motor freight service between Banning,)
 Beaumont, Oak Glen, Yucaipa, Redlands,)
 Highlands, East Highlands, Rialto,)
 Highgrove, and points intermediate,)
 also points reached by tap lines, and)
 Los Angeles, Wilmington and San Pedro,)
 California.)

Application No. 8686.

- Howard Robertson, for Orange Belt Draymen's Association.
- Ward Chapman, for Frost & Frost Trucking Co.
- A. B. Roehl, for American Railway Express Company, protestant.
- Devlin & Brookman, for Hodge Transportation Company, protestant.
- L. N. Bradshaw, for The Southern Pacific Company, protestant.
- Warren E. Libby, for Franchise Freight Carriers Association.
- R. E. Wedekind and George F. Squires, for Pacific Electric Railway, protestant.
- F. D. Howell, for Motor Transit Co., protestant.
- E. E. Bennett, for the Union Pacific, protestant.
- E. T. Lucey, for The Atchison, Topeka & Santa Fe Railway Company, protestant.

SHORE, COMMISSIONER:

O P I N I O N

Marion L. Frost and Wesley E. Frost and Joseph A. Paterson, co-partners, doing business under the fictitious name of Frost and Frost Trucking Company, have filed an application with the Railroad Commission in which they petition for a certificate of public convenience and necessity authorizing the operation of an automobile truck line for the transportation of freight in capacity load between Banning, Beaumont, Oak Glen, Yucaipa, Redlands, Highlands, East Highlands, Rialto, Highgrove and intermediate

points adjacent thereto and Los Angeles, Wilmington and San Pedro. The application was amended by permission of the presiding Commissioner and the final amendment permitted provided for the transportation of citrus fruits from the Redlands-Highlands District and Bloomington to Los Angeles, Wilmington and San Pedro, the transportation of deciduous fruits from Yucaipa Valley, Beaumont and Oak Glen and various packing and shipping centers more specifically named in applicant's amendment to amended Exhibit AA and for return of loads of fertilizer, packing house supplies and building materials.

The rates proposed vary according to the distance the commodity is moved, rates on return commodities being considerably lower than the rates on citrus and deciduous fruits moving from orchards or packing plants.

Public hearings were held at Los Angeles and Riverside, the matter duly submitted and the application is now ready for decision.

Applicant has available for the proposed service two Mack trucks of 2½-ton capacity each, two White trucks of 2½-ton capacity each, and one Reo 1½-ton capacity, four 3-ton trailers and one 2-ton trailer. These trucks are located principally at Redlands and are operated during the shipping season as traffic requires. The granting of the application was protested by the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, Los Angeles and Salt Lake Railroad, Pacific Electric Railroad Company, American Railway Express, the Hodge Transportation System, The Orange Belt Draymen's Association, and by some 53 operators of trucking lines claiming interest in the territory proposed to be served by this applicant and by the Orange Belt Draymen's Association, the other applicant whose application was set for hearing at the same time and place.

Considerable evidence was introduced, principally from fruit growers, packers and shippers in the Redlands district and the Yucaipa Valley, as to the necessity for prompt and efficient transportation of citrus and deciduous fruits from the packing plants to Los Angeles and harbor points. It appears that there has recently developed a considerable movement of citrus fruits to northern coast points, such as Portland and Seattle and other Puget Sound ports, these shipments moving by trucks from packing plants to Wilmington and San Pedro, and thence by water to destination. It appears that orders are received from buyers in the northern territory for shipments on designated steamers leaving Los Angeles Harbor. A good portion of these shipments must be rushed to the harbor as soon as orders are confirmed, due to the short period of time available before the sailing time of the vessel designated to carry the shipment. Due to this fact, packing houses, particularly at Redlands, have found it necessary to depend for this service principally upon local trucking concerns which are able to furnish equipment promptly and upon very short notice. Frost and Frost have been rendering the major part of such service during the present season. In October of last year their attention was called to the fact that under the provisions of Chapter 213, Statutes of 1917, as amended by Chapter 280, Statutes of 1919, a certificate of public convenience and necessity is required before any one may engage in the business of transporting property for compensation over a regular route or between fixed termini. Records of this Commission show that Frost and Frost, after notification, agreed to file an application for a certificate. No such application was received by the Commission during the year 1922 or during January of 1923, although it is claimed by Frost that an application with supporting

petition of numerous shippers was mailed to the Los Angeles office of the Commission. However, Frost and Frost, together with other trucking concerns, joined in an application under the name of the Orange Belt Draymen's Association, a corporation. This application, it appears, was drawn up, signed and verified in December, 1922, but was not filed with the Commission until February 16, 1923, the same date the present independent application of the Frost and Frost Trucking Company was filed.

A short time prior to the filing of such application, several of the trucks operated by Frost and Frost were stopped by local authorities of the City of Los Angeles for violation of a local ordinance prohibiting operation of trucking concerns in the city of Los Angeles without a local permit from the city authorities. At an informal conference held in the city of Los Angeles, it was agreed that the Commission would issue to Frost and Frost Trucking Company a temporary certificate authorizing operation between Redlands district and Los Angeles Harbor, provided a regular formal application for a permanent certificate be immediately filed.

At the informal conference above mentioned, it was shown from statements of various shippers that a necessity existed warranting the issuance of the temporary certificate for the transportation of citrus and deciduous fruits from Redlands to the harbor and on February 9, 1923, the Railroad Commission issued its Decision No. 11636 granting a certificate of public convenience and necessity to Frost and Frost Trucking Company, which certificate authorized the transportation of citrus fruits, namely oranges and lemons only, from packing houses located in and adjacent to Redlands to Los Angeles Harbor. Such temporary certificate expressly prohibited the transportation of any other commodities

whatsoever except those hereinabove named. This certificate was extended by Supplemental Orders, the last of which extended the time to and including the 31st day of March, 1923.

At the hearing upon the application of Frost and Frost Trucking Company for a permanent certificate, it appeared from the testimony of Marion L. Frost and Wesley H. Frost that they had not confined their operation under the temporary permit to the commodities therein authorized to be transported, but had in effect transported other commodities, particularly fertilizer, packing house supplies and building materials from the Harbor district and Los Angeles to packing houses and orchardists. This unlawful operation was carried on by applicant with full knowledge of the provisions of state law and full knowledge that the temporary certificate which they held did not authorize them to engage in the transportation of property for compensation from Harbor points and Los Angeles to Redlands or any other point east bound.

The Railroad Commission, as a regulatory body, is required by both the Constitution of the State of California and by statutory enactments to supervise and regulate public utilities engaged in business in the state of California. This Commission should not, we believe, grant to Frost and Frost Trucking Company a permanent certificate of public convenience and necessity in the face of the fact that the applicant now before this Commission not only operated in violation of the provisions of state law after written notification prior to the time they secured a temporary certificate, but that also after securing a temporary certificate, they continued their unlawful operation.

Considering the application from other aspects than the past action of applicants herein, it appears that Frost and Frost Trucking Company, a local Redlands concern, were seeking to establish service which would put Redlands in a preferential position

as regards other points which they proposed to serve. Rate schedules proposed by applicant were required to be amended on five different occasions during the hearing upon this proceeding, principally because the schedules as proposed by this applicant were shown on cross examination to be in violation of Section 21 of Article 12 of the Constitution of the State of California, prohibiting discrimination by transportation companies, or the charging of a greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than for a longer distance over the same line or route in the same direction.

The final proposed rate of applicant of \$5.00 per ton on citrus fruits, Redlands district to San Pedro or Wilmington, showed such a close margin, if any, of gross return per mile over the actual cost of operation, that, with reasonable salary and depreciation allowances, it would soon appear, we believe, to be operating at a loss.

In recommending the denial of this application, we do so without prejudice to the pending application of the Orange Belt Draymen's Association, which, for purposes of the above mentioned proceeding, was consolidated with this application, or to any other application from responsible parties seeking to meet the particular shipping necessities of the district involved.

I hereby submit the following form of Order.

O R D E R

A public hearing having been held in the above entitled proceeding, evidence submitted and the Commission being fully advised,

IT IS HEREBY ORDERED that the above entitled application be,
and the same hereby is, denied.

The foregoing opinion and order are hereby approved and
ordered filed as the Opinion and Order of the Railroad Commission
of the State of California.

Dated at San Francisco, California, this 13th day
of April, 1923.

C. A. Seaver

H. B. Bessinger

Irving Martin

Egerton Shore

J. T. Whittier

Commissioners.