

HFS

ORIGINAL

Decision No. 12801

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of A. J. HAPPE for an order grant-)
ing permission to extend his pre-)
sent auto truck service from Yucaipa) Application No. 8989.
Valley points to include Oak Glenn,)
Beaumont and Banning.)

ORDER DENYING REHEARING

BY THE COMMISSION:

On July 3, 1923, the Commission issued its Decision No. 12422 in the above entitled application.

On August 13, 1923, a petition for rehearing was filed in behalf of Coachella Valley Transportation Company, Hodge Transportation System and Rex Transfer Company.

On August 22, 1923, a supplemental petition for rehearing was filed on behalf of Rex Transfer Company individually.

We do not think it necessary to review in detail arguments set forth by petitioners as justification for the granting of rehearing of the above entitled application.

Certain specified grounds are set out under the title of "Summary" on page 1 of petition for rehearing, as follows:

"(a) Certain so-called 'prescriptive' motor truck operative rights were created by Statute 280, effective July 22, 1919; said statute being an amendment to Statute 213, laws of 1917. (b) Applicant filed with the Commission a tariff dated September 3d, 1919 covering

certain traffic between Yucaipa and Los Angeles.

(c) During the interim between 1919 and 1923 the volume of traffic between Yucaipa and Los Angeles materially increased. (d) During 1923 applicant, recalling his 1919 tariff filing, comes forward and alleges a perfected prescriptive operative right between Yucaipa and Los Angeles. (e) The Commission grants applicant ex-parte, a temporary permit between Yucaipa and Los Angeles. (f) In decision now being appealed the Commission validates applicants operative right between Yucaipa and Los Angeles also finds need and necessity for an enlargement thereof."

Statements made in this "Summary" of the grounds on which petition for rehearing is based, are entirely erroneous.

The Commission never granted ex parte or otherwise to applicant a temporary permit between Yucaipa and Los Angeles. The Commission did not validate applicant's operative right between Yucaipa and Los Angeles, but found as a fact that applicant, under the statutory provisions of Section 5, Chapter 280, Statutes 1919, and in accordance with his tariff filing, had a right to transfer deciduous fruits from Yucaipa to Los Angeles.

The joint petition for rehearing filed by protestants in this proceeding does not set forth facts or arguments sufficient to warrant a rehearing.

A supplemental petition for rehearing filed by Rex Transfer Company sets forth certain additional grounds upon which it is claimed a rehearing should be granted. This petition alleges that the

Rex Transfer Company introduced in evidence rates considerably lower than those proposed by applicant in the premises and further showed lack of west-bound tonnage over the very route proposed to be served by applicant, which, if applicant were permitted to operate and should secure the tonnage which this protestant and petitioner needs, would render unprofitable petitioner's business.

Reference to the record in this proceeding shows that at the time of the hearing upon this application the Rex Transfer Company's rates were not lower than those proposed by applicant but that after the filing of application herein under consideration, protestant Rex Transfer Company did file with the Commission a tariff quoting commodity rates west-bound upon certain commodities which were lower than those proposed by applicant.

The Rex Transfer Company has been in business in this territory for a considerable number of years and at no time heretofore considered the public entitled to special commodity rates on fruit shipments moving west-bound to Los Angeles markets, though during the entire period of its operation its west-bound tonnage, so the records show, amounted to approximately 25% of its total tonnage capacity as compared with the tonnage east-bound amounting to 80% of its total truck tonnage capacity.

As stated in previous decisions of this Commission, a protestant cannot expect to avoid competition when he refuses or fails to give the public a service at rates commensurate with traffic conditions but waits until such time as competition knocks at his door and then proceeds to combat competition through the offering of tariff schedules designed solely for the purpose of

avoiding a threatening competition by rendering the public a necessary service he has refused in the past.

We are of the opinion that the petitions for rehearing in this matter do not set forth grounds sufficient for reopening this proceeding.

IT IS HEREBY ORDERED that the petition for rehearing filed by the Rex Transfer Company, Coachella Valley Transportation Company and Hodge Transportation System be, and the same hereby are, denied.

Dated at San Francisco, California, this 7th day of ~~September~~ November, 1923.

Clarence

James Martin
Egerton Shaw

Commissioners.