

Decision No. 14825-

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of FRANK OWENS for certificate of)
public convenience and necessity)
to operate auto freight truck)
service between Pomona, River-)
side, San Bernardino, Beaumont,)
San Jacinto, Los Angeles, Corona,)
Santa Ana, Huntington Beach,)
Laguna, Long Beach, Wilmington,)
San Pedro, San Fernando and in-)
termediate points.)

APPLICATION NO. 10705

Hugh Gordon, for Applicant.

Devlin & Brookman by Douglas Brookman, for Hodge Transportation System, San Fernando Haulage Company, Keystone Express, Service Motor Express and Vance Truck Company, Protestants.

T. A. Woods, for American Railway Express, Protestant.

R. E. Wedekind, for Pacific Electric Railway and Southern Pacific Company, Protestants.

C. H. Tribit, Jr., for Coachella Valley Transportation Company, Protestant.

B. N. Tucker, for Pioneer Truck & Transfer Company, Protestant.

F. W. Granger, for Granger Truck Service, Protestant.

T. C. Whitlock, for Stacey's Transfer Company, Protestant.

E. T. Lucey, for The Atchison, Topeka & Santa Fe Railway, Protestant.

BY THE COMMISSION:

O P I N I O N

Frank Owens has made application to the Railroad Commission for a certificate of public convenience and necessity to establish service for the transportation of freight between Pomona, Riverside, San Bernardino, Beaumont, San Jacinto, Los Angeles, Corona, Santa Ana, Huntington Beach, Laguna, Long Beach, Wilmington, San Pedro, Pasadena, San Fernando, and intermediate points, and five (5) miles on either side of the highway traversed.

A public hearing herein was conducted by Examiner Williams at Pomona.

Applicant proposes operation on demand only, with twenty-four hours' notice required, in quantities of two tons or more, over five routes terminating at San Bernardino, San Jacinto, San Pedro, Long Beach and San Fernando. No schedule of operation is proposed. Applicant offers as equipment three trucks of nine tons' gross tonnage and two trailers of three tons' gross tonnage. Rates proposed in the application by Exhibit "A" are based upon hour use, but at the hearing applicant, by permission, amended this offer by substituting tonnage rates for distance transported, graduating from a rate of \$1.50 for a distance of twenty (20) miles or less, to \$4.00 for a distance of fifty-nine (59) miles.

According to the testimony of applicant, he has been

conducting a general trucking service in Pomona since the fall of 1914, beginning with one truck and a two-horse wagon. Continuously since then he has transported property to and from most of the points applied for upon an hourly basis of rates, although no rates have ever been filed by applicant with this Commission. Testimony of applicant and of other witnesses, as it appears in the record, is such that the fact is established that this transportation was so sporadic and infrequent as not to constitute a transportation business as defined in Chapter 213, Acts of 1917, as amended, except with reference to transportation between Colton and Pomona and between Los Angeles and Los Angeles harbor and Pomona. For this reason it is unnecessary to discuss testimony as to most of the hauls to other points, as this testimony discloses no operation conducted or proposed that requires or justifies the issuance of a certificate.

At the beginning of the hearing applicant stipulated that no certificate is sought that does not contemplate Pomona as the point of origin or destination of any haul. The fact that applicant has performed continuous services for approximately ten years between Colton and Pomona, and between Los Angeles and Pomona, was sustained by the testimony of C. C. Condit, manager of the Korckhoff-Cuzner Lumber Company; Harry Hinman, of E. Hinman & Sons, Pomona; John W. Mashmeyer, Clover Leaf Products Company, dealers in beverages, Pomona branch; F. H. Owens, electrical motor repairs, Pomona; Philip J. Curran, lumber and building materials, Pomona; D. W. Anderson, dairyman, Pomona; W. A. Evans, Pasadena-Sunset Canning Company;

John Findley, feed and fuel, Pomona, and W. T. Fleming, Pomona Cigar Company. Their testimony was, also, that they still require and will use applicant's services.

In addition, protestants L. R. Zagerise of the Keystone Express and T. K. Vance of the Vance Truck Line testified that they had known for a great many years of the hauling being done by applicant - approximately the period indicated by applicant. Vance testified that he made complaint to this Commission as to the operations of applicant between Pomona and Los Angeles because applicant was hauling groceries from Los Angeles consigned to W. L. Wright, wholesale grocer of Pomona, which transportation had previously been performed by Vance. Applicant testified that he had been hauling merchandise for Wright since 1914, and with increasing frequency.

The record is clear that applicant has been performing transportation service between Los Angeles and Los Angeles harbor and Pomona, and between Colton and Pomona, practically ever since 1915; that originally such transportation was infrequent, but that in the last five years the frequency has accelerated, until, at the present time, applicant is making trips between Los Angeles and Pomona on an average of six times monthly, and between Colton and Pomona about as frequently. However, pending action upon the present application, applicant has desisted from this service between the points named.

Witnesses testified, in general, that the shipments which applicant has transported for them, and for which they deem his service is now required, were largely emergency matters; that the bulk of their shipping is done by rail, most of

them having spur tracks at their places of business; that the movement from Colton to Pomona is almost wholly of cement, with very little, if any, movement from Pomona to Colton; that the movement from Los Angeles and Los Angeles harbor consists of lumber, fuel briquets, heavy hardware, building material, groceries, canned goods, sugar in bags and bottled drinks.

Protestant Hodge Transportation System, which is authorized to conduct demand transportation between nearly all of the points sought by applicant, has no office or agent at Pomona. Empty trucks of this carrier pass daily through Pomona, according to the testimony of F. M. Hodge. He also testified that trucks could be made available to shippers at Pomona on four hours' notice, and that ninety-six (96) pieces of equipment are available.

L. R. Zagerise, owner of protestant Keystone Express, established in 1916, has in use eleven trucks and five trailers, the capacity of which is not used by shippers. The main office and terminal are in Pomona and joint rates between Pomona and Los Angeles harbor are established.

Protestant F. W. Granger specializes in transporting cement and building material and has headquarters in Pomona. He has three trucks and two trailers and has bought another truck and trailer. This protestant testified that he could handle all cement shipments from Colton to Pomona. His rate for such haul is \$2.10 per ton.

Vance Truck Line, established in 1916, between Pomona and Los Angeles, has an office and agent at Pomona and uses four trucks in its business, which are not always used to capac-

ity, according to the testimony of T. Z. Vance.

Protestant Southern Pacific Company operates two local L. C. L. freights and a car-load train daily between Los Angeles and Pomona, breaking bulk in the deliveries by night service at 6:00 a. m. The day local reaches Pomona about noon.

Other protestants do not serve Pomona or Colton. All protestants emphasized their belief that applicant cannot operate profitably at the rates proposed by him, which are lower than protestants' on practically all commodities. Applicant responded with the statement that the distance rates proposed are practically the same as the hour basis on which he has subsisted for ten years, and that his business has been profitable.

The record sustains the conclusion that applicant herein, since the period prior to May 1, 1917, and to the present time, has been conducting business as a common carrier of property between Pomona and Colton and between Pomona and Los Angeles and Los Angeles harbor points. That this business has been conducted without certificate seems to have been wholly due to the mistaken belief of applicant that no certificate was required. During all these years no complaint was made by other carriers. When complaint was made, applicant discontinued service and sought immediately to comply with the law by filing application herein. A review of the record is satisfying that applicant's services in transporting cement and lime between Pomona and Colton, and these and other commodities between Pomona and

Los Angeles, on demand, in quantities of two or more tons, are reasonably required by a substantial portion of the public, and that a certificate authorizing such service should be granted. In all other respects the application should be denied.

O R D E R

Frank Owens having made application to the Railroad Commission for a certificate of public convenience and necessity to establish service for the transportation of freight between Pomona, Riverside, San Bernardino, Beaumont, San Jacinto, Los Angeles, Corona, Santa Ana, Huntington Beach, Laguna, Long Beach, Wilmington, San Pedro, Pasadena and San Fernando, and intermediate points, and five (5) miles on either side of the highway traversed, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment of service as proposed by applicant herein for the transportation of commodities listed in applicant's amended Exhibit "A" attached to application, between Pomona and Los Angeles and Los Angeles harbor, without intermediates, and between Pomona and Colton for cement and lime only, without intermediates, over and along the following routes:

Via Valley Boulevard to Colton; and

Via Los Angeles-Pomona Boulevard to
Los Angeles and Wilmington and San
Pedro (Los Angeles harbor); and

IT IS HEREBY ORDERED that a certificate of public
convenience and necessity therefor be and the same hereby is
granted, subject to the following conditions:

- I. Applicant shall, within twenty (20) days
from the date hereof, file with this Com-
mission his written acceptance of the
certificate herein granted; shall file, in
duplicate, time schedules and tariff of
rates identical with those as set forth in
Exhibit attached to the application herein
within a period of not to exceed twenty
(20) days from date hereof; and shall com-
mence operation of the service herein
authorized within a period of not to exceed
thirty (30) days from date hereof.
- II. The rights and privileges herein author-
ized may not be sold, leased, transferred
nor assigned, nor service thereunder dis-
continued, unless the written consent of
the Railroad Commission to such sale, lease,
transfer, assignment or discontinuance has
first been secured.
- III. No vehicle may be operated by applicant
under the authority hereby granted unless
such vehicle is owned or is leased by ap-
plicant under a contract or agreement on
a basis satisfactory to the Railroad Com-
mission.

IT IS FURTHER ORDERED that in all other respects
the application herein be and the same hereby is denied.

For all other purposes the effective date of this
order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 20th day
of April 1925.

Oliver A. Leary
Eugene S. Shure
George D. Squire
Commissioners.