

Decision No. 15002

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of JOHN H. EAGLE for certificate)
of public convenience and neces-)
sity to operate freight truck)
service between Los Angeles and)
Randsburg, Johannesburg, Osdick,)
Inn City, Hampton and Atolia.)

APPLICATION NO. 10809

W. H. Powell and John H. Eagle, for Applicant.

L. W. Butterfield and C. G. Fluhr, for Atchison,
Topeka & Santa Fe Railway Company, Protestant.

T. A. Woods, for American Railway Express, Pro-
testant.

O. W. Tuckwood, for Tirona Railroad Company, Pro-
testant.

BY THE COMMISSION:

O P I N I O N

John H. Eagle has made application to the Railroad Commission for a certificate of public convenience and necessity to operate a freight truck service between Los Angeles and Randsburg, Johannesburg, Osdick, Inn City, Hampton and Atolia.

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

Applicant proposes the transportation of miscellaneous freight and merchandise between Los Angeles and termini named,

without any intermediate service. The distance between Los Angeles and the group of terminal points is approximately 150 miles. The route to be traversed is over the cement State highway for the first 100 miles, terminating at Mojave, the remainder being over the graded county highway through the desert country.

Applicant offers as equipment for the proposed service one 2-ton truck and one 1½-ton truck. Four class rates of \$1.10, 95 cents, 80 cents and 70 cents, respectively, with a minimum charge of 75 cents, are proposed, with three round trips scheduled weekly, leaving Randsburg on Mondays, Wednesdays and Fridays and returning from Los Angeles on Tuesdays, Thursdays and Saturdays.

The terminal points are a group of mining communities in the Randsburg district, and it is the purpose of applicant to make deliveries at store-door in each of the points sought. Applicant testified that he had been transporting fruits, vegetables and other commodities for many months, and that all the commodities he had transported had been purchased by him either in Los Angeles or Bakersfield and resold in Randsburg; that frequent demands had been made upon him to transport other material, but that he had declined to furnish such service. Applicant further testified that he had \$4,000 cash in bank and \$25,000 worth of property in Bakersfield; that he had a lot in Randsburg and planned to erect a freight terminal and warehouse on it. He testified that other truck operators had been transporting more than 50 tons of freight per month into the Randsburg district from various points,

mostly from Los Angeles, and that the public demand for truck transportation was such that he felt an authorized carrier should be entrusted with the business.

Applicant was supported in his application by C. C. Jewell, general merchandise, Randsburg, who receives about a ton of freight per week; Fred C. Bailey, boarding house keeper at Inn City and Osdick, who testified that he requires subsistence to provide 1500 meals daily and has had as high as 14 tons shipped by truck in one week; J. T. Hunter, furniture dealer, Randsburg; Madeline Hall, notions and fancy goods, Randsburg; John R. Hitt, gas and oil service station, Randsburg; and Peter Macready, dry goods, Randsburg.

The testimony of these witnesses was of a general character and was in effect that the establishment of a truck store-door delivery to their places of business would be at least a great convenience to them and would relieve them of the expense of delivery to and from rail termini. There was also testimony on the part of these witnesses that one Atkinson had conducted a general trucking operation in transporting ore from the Randsburg district to Los Angeles harbor, on return trips transporting merchandise and other commodities to points in the Randsburg district. Most of the witnesses testified that they would use truck service in preference to rail or express service, avoiding rail service because of the necessity of delivery from terminal and the length of time required for transportation, and avoiding express because of the higher rates.

The granting of the application was protested by the Atchison, Topeka & Santa Fe Railway, whose branch from Kramer terminates at Johannesburg, a distance of two miles from Randsburg. Three freight trains weekly are operated over this branch. An exhibit filed by this protestant covering its total tonnage by months since January, 1921, indicates a wide fluctuation in freight transportation in and out of Johannesburg. The average of outgoing shipments in 1921 was 8,006,807 pounds per month. This gradually decreased until, in 1924, the average outgoing shipment per month was 3,327,429 pounds. Based on the first three months of 1925, the outgoing shipments for this year will average 2,408,531 pounds per month. The average incoming L C L freight into Johannesburg in 1921 was 168,071 pounds per month. In 1922 it averaged 271,962 pounds per month, while in 1924 it decreased to 152,937 pounds per month. The large volume of tonnage supporting the Kramer branch of the Santa Fe into Johannesburg is ore shipments, and it was the testimony of B. E. Beaver, agent of the Santa Fe at Johannesburg, that the decrease in shipments is due to the decrease in mining activities and to the operation of unauthorized trucks, which he estimated transported 50,000 pounds of freight per month into the district and 150,000 pounds out.

Protestant American Railway Express, through the testimony of E. E. Scruggs, route agent, Bakersfield, showed that its volume of business in and out of the district is only 50 per cent of what it was three years ago, and that the business is so light that it is extremely difficult to procure an agent at Randsburg; that in order to sustain an agency there, bus-

iness obtained at Atolia and Osdick, points on the rail line, must be credited to Randsburg. It was the opinion of this witness that any considerable further loss of business in the Randsburg district would make it necessary for this protestant to discontinue its agency at that point.

By Decision No. 9917 on Application No. 7274 of P. R. McCutchen and George Chappell for a similar certificate in 1921, this Commission denied a certificate to applicants therein on the ground that the establishment of truck service would tend to impair the ability of protestant Santa Fe Railway to maintain adequate service into the Johannesburg region. It was the testimony of C. G. Fluhr, superintendent of the Arizona division of protestant, that in January, 1922, protestant's service was increased from four trains a week to daily service; that this service was maintained until the fall of 1923, when it was reduced to three trains weekly, due to a falling off in ore shipments; and that there is now a general decrease in the volume of business. Mr. Fluhr testified that the losses sustained by this carrier were largely due to truck operation, and that further losses might necessitate a further curtailment of service.

The situation in this district appears to be similar to that which existed in 1921, with the exception that in the earlier year truck operation was not so general as it appears to be at this time from the record herein. It seems clear that much of the freight movement heretofore enjoyed by protestant Santa Fe Railway has been transported somewhat regularly by truck service from Los Angeles into Randsburg and adjacent

points. In this respect the denial of a certificate to former applicants has not accomplished the protection expected to accrue to the rail carrier, as the unauthorized operations have been patronized by shippers, whose business otherwise would have been given to protestant. The same appears equally true as to protestant American Railway Express.

In this proceeding applicant offers more advantageous rates than were offered in the former proceeding, his schedule of operation appears to be adjusted to the needs of the community, and he comes to the Commission with clean hands and ability to conduct the operation for which he seeks a certificate. The record shows that the merchandise brought into Randsburg and transported out of it exceeds 25 tons per month; that various truckmen are operating at will without legal authority or responsibility, and that their competition has been a distinct injury to the rail carriers. While the testimony of witnesses is not great in volume as to the actual necessity for the service, we believe, under all the conditions found in the record, that justification has been shown for the granting of a certificate to applicant, on the theory that if shippers in the Randsburg district require and use a trucking service, it should be one that is within the regulation of law and answerable to all the duties of a common carrier. Necessarily, applicant will be charged with the duty of preventing intrusion upon his certificate rights and thus will reduce the injury both to the rail carriers and to himself.

We therefore find as a fact, upon the record herein, that public convenience and necessity require the automotive freight service as herein proposed by applicant, and that a

certificate therefor should be granted. An order will be so entered.

O R D E R

John E. Eagle having made application to the Railroad Commission for a certificate of public convenience and necessity to operate a freight truck service between Los Angeles and Randsburg, Johannesburg, Osdick, Inn City, Hampton and Atolia, 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 operation of an automotive freight service between Los Angeles on the one hand, and Randsburg, Johannesburg, Osdick, Inn City, Hampton and Atolia, on the other hand, over and along the following route:

Via main county highway between Randsburg and Mojave; and

Via State highway between Mojave and Los Angeles; and

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

- I. Applicant shall, within twenty (20) days from the date hereof, file with this Commission 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 commence 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 authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, 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 applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.

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 31st
day of June 1925.

H. H. Boudie

George D. Squires

Emmett
Commissioners.