

Decision No. 15006

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of C. E. CORNWALL for certificate)
of public convenience and neces-)
sity to operate freight between)
Colton, California, and Los Ange-)
les, California, and along the)
Sacatela Storm Drain.)

APPLICATION NO. 11015

Asa V. Call, for Applicant.

C. W. Cornell and F. A. Betts, for Pacific Elec-
tric Railway and Southern Pacific Company, Pro-
testants.

Phil Jacobson, for Motor Franchise Carriers' As-
sociation, F. W. Granger Truck Service, Hodge
Transportation System and Rex Transfer Company,
Protestants.

H. B. Ellison, for Los Angeles & Salt Lake Rail-
road Company, Protestant.

E. A. Bryan and E. T. Lucey, for Atchison, Topeka
& Santa Fe Railway Company, Protestant.

BY THE COMMISSION:

O P I N I O N

C. E. Cornwall has made application to the Railroad
Commission for a certificate of public convenience and neces-
sity to operate freight service between Colton and Los Angeles
and points along the Sacatela - La Cienega storm drain.

A public hearing herein was conducted by Examiner
Williams at Los Angeles.

Applicant proposes only the transportation of cement in sacks from the plant of the California Portland Cement Company at Colton to points in Los Angeles city along the Sacatela storm drain and points in Los Angeles county along the La Cienega storm drain. The drain under construction is a continuous concrete structure extending from the north of Hollywood in a general southerly and westerly direction to the Pacific Ocean. As one part of the project is within the domains of the city of Los Angeles and the other in the county of Los Angeles, separate contracts have been let for the work by each political subdivision. The contractors will require approximately 150,000 barrels of cement for the work and the material is to be purchased and paid for by them at the mill.

Applicant asks also a certificate authorizing him to transport materials and merchandise from the city of Los Angeles or any part thereof to the plant of the cement company at Colton. He agrees that at the expiration of the movement of cement from the mill to the storm drain work, he will surrender his certificate and abandon operation between termini.

Applicant proposes to transport cement to that portion of the drain within the city of Los Angeles at a rate of 32 cents per barrel, or approximately 8 cents per sack, and to that portion in the county of Los Angeles at 34 cents per barrel, or 8½ cents per sack, and to transport other material indiscriminately on the return movement from Los Angeles only to the cement mill at the rate of 15 cents per

100 pounds. The return movement would consist chiefly of building material, machinery and other supplies needed by the cement plant. Applicant testified in support of his application that the two hauls were inseparable; that he could not conduct the transportation of cement westbound at the rates proposed without the privilege of back-haul at the rate proposed. Applicant made a satisfactory showing as to his ability to provide equipment for such an operation, but his showing as to his ability to perform the service legally, within the restrictions imposed by this Commission and by the provisions of the Motor Vehicle Act is not at all satisfying, it being apparent that he possesses little information as to load limitations under the Motor Vehicle Act, the speed permitted, the distances the commodity is to be transported or the routes over which it is to be transported.

Applicant presented as a witness in support of his application R. L. Vance, sales manager of the California Portland Cement Company at Colton. Mr. Vance testified that the rates of existing carriers were not available in an emergency created by the intrusion of foreign-made cement into Southern California, and that, in order to compete with foreign-made cement, a very low rate must be obtained by producers of that commodity. Mr. Vance testified that cement was being sold f. o. b. the cement mill; that its transportation and the charges thereon were to be paid by the storm drain contractors; that no contract had been entered into by applicant and the contractors, and that he had acted as intermediary between the contractors and applicant in order to

provide transportation of the commodity so that the cement mill might insure the sale. The witness admitted that the rail carriers had already conceded a reduction in rates of 40 cents a ton on cement, available until July 1, 1925, and that cement from Colton could be delivered by rail at Los Angeles for \$1.50 per ton, and at points approximately along the line of the storm drain construction at \$1.80 per ton. Witness further testified that the arrangement with applicant was such that transportation from the cement mill and delivery at the work itself would be obtained for a rate less than or not exceeding the rail rate, and that the pick-up and delivery feature eliminated rehandling and all trucking cost from rail carrier to the work. Witness explained that delivery by rail to points within a mile or two of the work meant a combination of rail and truck delivery, and that, in addition to the rail rate of \$1.80 per ton, a cartage rate of 15 cents per 100 pounds must be paid. Applicant proposes to deliver on the job at the rate of approximately \$1.70 a ton. Witness further testified that unless applicant was permitted to make the haul as proposed, the cement mill would lose the sale of the cement and the contractors would purchase their supply from foreign cement brokers at Los Angeles harbor. He testified that foreign-made cement delivered by truck from the harbor to the work could be delivered at 23 cents per barrel (including transportation) less than it could be furnished by the native cement plants, the contractors absorbing the difference of 8 cents in trucking rates. Witness further testified that the cement mill could not absorb any additional charges.

Throughout the proceeding the rate at which the commodity may be purchased f. o. b. the harbor or at the cement mill was not stated.

On cross-examination Mr. Vance testified that a back-haul from Los Angeles was not needed by the cement mill, and that there was no assurance that applicant would obtain all or any of the business moving eastward from Los Angeles to the cement mill. Subsequently, in response to a question by counsel for applicant, Mr. Vance testified that the back-haul would be necessary in order that the transportation of cement at the rates proposed might be profitable to applicant.

No witnesses were examined in behalf of applicant except Mr. Vance and the applicant himself. Applicant testified that he did not have any arrangement with the contractors, and it appeared that he did not know to whom he was to look for payment for the service he proposes to perform. He was positive, however, that he could not conduct the cement haul at the rate proposed without all the return movement of commodities and material to the cement plant at Colton.

Protestants, by testimony of witnesses and by exhibits, showed that there exist abundant facilities for the movement of cement and other commodities in either direction; in fact, the adequacy and efficiency of existing facilities were not seriously questioned by applicant. Pacific Electric Railway is able to deliver cement from Colton to points within one and one-half miles of the work on a basis of car-loads of 60,000 pounds or more, at the rate of \$1.80 per ton, the points of delivery having team tracks and excellent

facilities for rehandling as the storm drain work progresses. Protestant Granger Truck Service appears to have adequate equipment and to be able to make deliveries along practically the entire route of the storm drain. Its rate is \$2.60 per ton to Los Angeles, but would be higher for delivery at points outside the city.

It appears further that the reduction made by the rail carriers of 40 cents per ton was procured at the instance of the cement companies, and that it places the cement mill at Colton on a parity, so far as freight transportation by rail is concerned, with movements from Los Angeles harbor to the storm drain work. Any rail movement from either place, however, would require truck delivery from the team tracks to the work. It was the testimony of Mr. Vance that this would involve a charge of 15 cents per 100 pounds, and Mr. George F. Squires, testifying for Protestant Pacific Electric Railway, stated that this was the probable cost of such a haul.

Not only are all the rail carriers available for return shipments from Los Angeles to Colton, but the Protestant truck lines all have ample facilities for the transportation proposed by applicant. Mr. Vance testified that their shipments from Los Angeles to Colton had been mainly by rail, with some by truck, and that such movements had been satisfactory. T. R. Rex, owner of the Rex Transfer Company, testified that in the month preceding the hearing he had transported by truck from Los Angeles to the cement company, commodities on which the charges aggregated \$171.00.

Applicant relies upon the rate on cement proposed by him as the principal justification for the granting of a cer-

tificate for the service proposed by him. It is our conclusion from all the testimony in the record that in order to prevent the use of foreign-made cement in the construction of the storm drain, the rail carriers, who have already reduced their rate to approximately the same as that proposed by applicant, must now yield the haul in spite of the adequacy and efficiency of their facilities; further, that in order to permit this applicant to conduct such operation profitably, the rail carriers and established truck carriers must forego back haul from Los Angeles to the cement plant.

We cannot find in the record any showing that public necessity requires the service of applicant as proposed, even admitting that such service might produce some measure of profit to applicant. The beneficiaries of this movement are the contractors on the work, and there is no testimony on their part as to any necessity for applicant's service. In substance, the record shows the private need of the cement plant for a method of transportation at a lower rate than can be obtained from existing carriers, in order that the product of the plant may be disposed of. As the work is being performed by contractors for the political subdivisions, and not by the subdivisions themselves, the question of a municipal rate does not enter into the proceeding, nor have the municipalities or the cement industry asked a municipal rate.

In view of the adequacy and efficiency of the existing facilities and the already existing reduction in rates offered by rail carriers to meet foreign cement competition, we cannot find reason in this proceeding to justify the ad-

mission of applicant into the transportation field for the limited purpose of transporting a large volume of cement which apparently can be readily transported by existing facilities. The desire of the applicant to undertake this service is not a condition justifying the granting of the desired certificate.

Upon the record herein we hereby find as a fact that public convenience and necessity do not require the service as herein proposed by applicant, and that, therefore, the application should be denied.

O R D E R

C. E. Cornwall having made application to the Railroad Commission for a certificate of public convenience and necessity to operate an automobile freight service for the handling of cement from the plant of the California Portland Cement Company at Colton, to Los Angeles and points in Los Angeles County, and a return movement of commodities for said cement plant, 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 do not require the service as proposed by applicant; and

IT IS HEREBY ORDERED that this application be and the same is hereby denied.

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

Dated at San Francisco, California, this 3rd
day of July 1925.

H. B. Brundage

George D. Squires

Commissioners.