

Decision No. 10327

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
HARRY E. FISHBAUGH, to operate auto)
freight truck service between Oxnard) Application No. 10946
and Los Angeles and Oxnard and)
Santa Monica.)

Durley & Downes, by Mark Durley, for Applicant,
Phil Jacobson, for Los Angeles and Oxnard Express,
Protestant,
L. T. Fletcher, for Service Motor Express, Protestant,
T. A. Woods, for American Railway Express Company,
Protestant.

BY THE COMMISSION -

OPINION

In this proceeding, Harry E. Fishbaugh has petitioned the Railroad Commission for a certificate of public convenience and necessity authorizing the operation of an automobile truck service for the transportation of creamery and dairy products between Oxnard and Los Angeles and Oxnard and Santa Monica, and intermediate points. In this service applicant will use three 1½ ton trucks and one 1-ton trailer. Accompanying the application are the proposed tariff of rates and time schedules, together with the form of a proposed contract between applicant and Ventura County Ice and Milk Company, a corporation, contemplating the transportation of milk and dairy products for that company exclusively.

A public hearing was held before Examiner Austin at Los Angeles on May 14 and May 16, 1925, when evidence was offered, the matter was duly submitted, and it is now ready for decision.

In support of the application testimony was offered by the applicant himself and certain officers of Ventura County Ice and

Milk Company, which for convenience will be designated hereinafter as the Ventura Company.

The Ventura Company operates a creamery at Oxnard where it manufactures various dairy products; at Santa Monica it conducts a distributing plant; and it distributes its products in Los Angeles through the agency of a local firm. Until April, 1924, shipments were made by railway freight and express, but this proved unsatisfactory because the trains left Oxnard at inconvenient hours, and a transfer to and from stations was required. Desiring the convenience of store-door pick up and delivery, the Ventura Company in April, 1924, arranged with one Bishop to truck its shipments. During May, 1925, Bishop withdrew, and applicant succeeded him, ceasing to perform this service, however, when informed by this Commission that it was illegal. The present application then followed. Applicant sold two of his trucks to the Ventura Company, and has since operated them as its agent. He will continue to do so if this application is denied, but if it is granted, he will repurchase the trucks and use them in this service.

Applicant conducts a garage at Oxnard. He has sufficient equipment and financial ability to carry on the service, but has had no previous experience as a freight truck operator. He believes he can operate at a cost of nine cents a mile, and that the proposed rates are remunerative. He will haul exclusively for the Ventura Company, as provided in the proposed contract accompanying the application, which he is willing to execute. The Oxnard-Los Angeles service may be discontinued at any time ^{upon} thirty days notice to applicant, the Ventura Company being unable to guarantee the continuance of this service, leaving only the Oxnard-Santa Monica route which it was stated would be continued in any event.

The Los Angeles & Oxnard Daily Express now operates a freight truck line between Oxnard and Los Angeles; between Los Angeles and ^{Santa Monica} ~~Oxnard~~ & similar service is conducted by the Service

Motor Express. There is no direct truck service between Oxnard and Santa Monica. The Ventura Company objected to the delay caused by the transfer at Los Angeles, and asserted that its products were injuriously affected by other shipments with which they came into contact on the trucks of these carriers. Furthermore, these lines had declined to enter into any contractual arrangements relative to this transportation service. The company's representatives testified that if this application were denied, rather than patronize the common carriers, the company itself would undertake the transportation of its products.

The granting of this application was protested by Los Angeles & Oxnard Daily Express, Service Motor Express, and American Railway Express Company.

Protestant, Los Angeles & Oxnard Daily Express, operates a daily freight truck service between Los Angeles and Oxnard. It has six trucks and trailers and is financially able to acquire more equipment when needed. The copartners conducting this line testified they can properly handle the Ventura Company's products without injuring them through contact with other commodities, and will establish suitable and expeditious schedules for this service. Since most of their business moves westbound from Los Angeles to Oxnard, they are willing to publish a low commodity rate on this traffic, in order to create a back-haul. The question of a more expeditious through service to Santa Monica has been discussed with the Service Motor Express, which uses their Los Angeles terminal, and these lines are willing to establish a joint schedule permitting the delivery of these shipments at an hour agreeable to the Ventura Company. They declined to contract for hauling these shipments, as such an obligation would be incompatible with the public duties of a common carrier.

The General Manager of protestant Service-Motor Express testified that this line now operates five round trips daily between Los Angeles and Santa Monica, using 19 trucks in this service. He is willing to adjust the time schedules to meet the needs of the Ventura Company, and to make concessions in the rates. In view of the service afforded by his line in connection with that of the Los Angeles & Oxnard Daily Express, he considered a direct line from Oxnard to Santa Monica to be an unnecessary duplication of facilities, and stated that the existing lines with their larger and more efficient organizations can operate more economically than applicant.

Witnesses for both these protestants concurred in the opinion that applicant's operating costs will exceed nine cents a mile, one of them estimating such costs at double this figure. No evidence was introduced by protestant, American Railway Express Company.

The record in this case shows no public need for applicant's proposed service. The existing carriers have adequate facilities to handle all traffic offered, and have shown a disposition to make all reasonable concessions in the matter of rates and time schedules. There is no assurance that applicant can operate this line at a profit. Under the terms of the proposed contract, the Ventura Company can terminate all its obligations thereunder in thirty days. Since applicant will be obliged to serve this company alone, he will then be compelled to withdraw his service or apply to the Commission for an enlargement of his certificate. In view of this circumstance and of the adequate service now rendered by the existing carriers, we believe the application should be denied.

Upon full consideration of the evidence, we are of the opinion and hereby find as a fact that public convenience and necessity do not require the operation by Harry E. Fishbaugh

of an automotive truck service for the transportation of creamery and dairy products between Oxnard and Los Angeles and Oxnard and Santa Monica, and intermediate points.

An order will be entered accordingly.

O R D E R

A public hearing having been held in the above entitled application, the matter having been duly submitted, the Commission being now fully advised, and basing its order on the findings of fact appearing in the opinion which precedes this order,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby declares that public convenience and necessity do not require the operation by Harry E. Fishbaugh of an automotive truck service for the transportation of creamery and dairy products between Oxnard and Los Angeles and Oxnard and Santa Monica, and intermediate points.

IT IS HEREBY ORDERED that the application of Harry E. Fishbaugh for a certificate of public convenience and necessity be and the same is hereby denied.

Dated at San Francisco, California, this 21st day of August, 1925.

Clarence

George D. Spence

Emmanuel

Leon White
COMMISSIONERS.