

Decision No. 15411

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of CHARLES A. HIGGINS, Jr., for a )  
certificate of public convenience )  
and necessity to operate a freight )  
auto truck service between San )  
Diego, Bonita and Sunnyside. )

APPLICATION NO. 11117

E. J. Bischoff, for Applicant.

F. B. Dorsey, for San Diego & Arizona  
Railway, Protestant.

BY THE COMMISSION:

O P I N I O N

Charles A. Higgins, Jr., has made application to the Railroad Commission for a certificate of public convenience and necessity to operate a freight auto truck service between San Diego and Bonita and Sunnyside.

A public hearing herein was conducted by Examiner Williams at San Diego.

Applicant has been conducting a business of transporting milk and dairy products from ranches in the vicinity of Bonita and Sunnyside to points west of the city of San Diego for almost five years, and incidental to this traffic has been hauling miscellaneous freight. He testified that he did not learn until about two years ago that a certificate was required for such operation, and that when he sought legal advice he was

informed that the service performed by him had been exempted by amendment to Section 5 of the Auto Transportation Act, Acts of 1923, and the exemptions contained therein. When applicant was informed by this Commission that this exemption had been declared invalid by the courts, he filed the application herein in order to comply with the law.

Applicant is now transporting 40 to 45 cans of milk twice daily from six dairies. He proposes also to establish a general freight truck service between the points named and San Diego. Rates for all the services are shown in applicant's Exhibit "A" attached to the application. Applicant has three trucks available for the service proposed.

Testimony in support of the application was given by C. A. Haffly, general merchant of Bonita, and F. V. Potter, general merchant of Sunnyside, for whom applicant has already hauled merchandise other than commodities exempted by the so-called Crittenden Amendment, heretofore referred to. Both of these witnesses testified that they carry small stocks which need constant replenishment; that they require ice and other commodities which they cannot obtain in any other manner, and that the service proposed by applicant will meet the needs of themselves and many ranchers and other storekeepers in the Sweetwater Valley. Mr. Haffly receives 15 to 20 tons monthly, and Mr. Potter a smaller quantity.

The San Diego & Arizona Railway opposed the granting of the application herein, upon the theory that the points sought to be served by applicant are near enough to protestant's Chula Vista station to receive adequate rail service. The testimony shows, however, that Bonita is nearly three miles

from the Chula Vista stop, that Sunnyside is five miles therefrom, and that there is no means of delivery between Chula Vista and either place. Both witnesses for applicant testified that it is impracticable to use the rail service, because of inability to know when shipments should be sent for, and also because of the length of time required to bring them to the store destination. In addition, while the hearing in this application was continued partly for the purpose of giving protestant an opportunity to make a further showing in support of its protest, protestant did not appear at the second hearing and made no showing in its behalf.

We therefore find as a fact, upon the record herein, that public convenience and necessity require the service proposed by applicant, and an order granting a certificate therefor will be entered.

#### O R D E R

Charles A. Higgins, Jr., having made application to the Railroad Commission for a certificate of public convenience and necessity to operate a freight auto truck service between San Diego, Bonita and Sunnyside, 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 as proposed by applicant herein of a freight auto truck service between San Diego, Bonita and Sunnyside, over and along the following route:

Beginning at the main county north and south highway at the Sweetwater Dam, thence southerly to Bonita and one mile on either side of the road, and thence via main county highway to National City, thence north through National City into the city of San Diego; 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 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 and after the date hereof.

Dated at San Francisco, California, this 19th day of September 1925.

H. H. Brundage

George D. Squires

Leon Whitwell  
Commissioners.