

ORIGINAL

Decision No. 155 & 2

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application)
of CLEMENT C. FLOERSCH for cer-)
tificate of public convenience and)
necessity to operate motor truck)
service between San Ysidro and)
Nestor Districts and San Diego,)
California, and between Aztec City)
District and Imperial Beach Dis-)
trict and the city of San Diego.)

APPLICATION NO. 11124.

Edward T. Lannon, for Applicant.

C. K. Fitzgerald, for Ray Transfer Company,
Protestant.

H. J. Bischoff, for Tia Juana Express, Pro-
testant.

F. B. Dorsey, for San Diego & Arizona Rail-
way, Protestant.

M. Thompson, for American Railway Express,
Protestant.

E. B. Baskerville, for George J. Nixon, Pro-
testant.

BY THE COMMISSION:

O P I N I O N

Clement C. Floersch has made application to the Rail-
road Commission for a certificate of public convenience and
necessity to operate motor truck service for the transportation
of milk, dairy feed and general freight between San Ysidro,
Nestor, Aztec City and Imperial Beach districts, and the city
of San Diego.

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

During the period when the movement of farm products was exempted from regulation by reason of the Amendment of 1923 to Section 5 of the Auto-Transportation Act, which amendment was declared invalid by the Supreme Court in April, 1925, applicant herein and his father, A. M. Floersch, established and since have conducted the service for which a certificate now is sought. The father, shortly before the hearing, transferred his interests to applicant.

Applicant serves eight dairies, producing approximately 120 cans of milk daily, all of which is transported to creameries at San Diego. He also has been hauling grain and other dairy feed to the producers, and in addition has been conducting a general freight movement between San Diego and the communities served, which are southwest of San Diego. Applicant has three trucks available for the service and proposes two round trips daily. His rate on milk from all points is 20 cents per 10-gallon can, with free return of empty containers, and 10 cents per can on shipments of more than one ton daily; his rate on general freight is 10 cents per 100 pounds in lots of one ton or more, or 25 cents per 100 pounds in lots of less than one ton, with a minimum charge of 25 cents.

Applicant produced as witnesses in his behalf Duncan K. Davis, Thomas F. Russell and Robert A. McCann, all shippers in the Nestor district, who testified as to the satisfactory character of his service in transporting milk, and

also as to their dissatisfaction with the service previously given by Tia Juana Express, protestant herein.

The granting of the application was protested by the Tia Juana Express, owned by F. V. and M. F. Sanclemente, which has been operating a general trucking service to all the points named, except Aztec City, under authority of this Commission and by prescriptive operation, for many years. The record shows that in the main this carrier performed service similar to that applied for by applicant, until January, 1924, when applicant acquired the bulk, and eventually all, of the milk business previously enjoyed by protestant. The only witnesses examined testified that protestant maintains but one service daily to San Diego, and but one return of cans daily, whereas creamery requirements are for two deliveries daily; that protestant had not gone to certain ranches to pick up milk for transportation, but had required delivery at a point convenient to it; and that its service in general was neither as adequate nor as efficient as that which has been given by applicant. E. M. Hutchinson, manager of protestant company, testified that his company maintains a service between San Diego and Tia Juana via Palm City, Nestor and San Ysidro, that it possesses ample equipment to perform all the service which applicant proposes to give, and that the back-haul from Tia Juana is negligible unless protestant can enjoy the milk hauls. Mr. Hutchinson's testimony was to the effect that applicant and his predecessor had acquired the business by rate reductions, and that particular preferential rates had been given the Imsand Ranch, in

the vicinity of Palm City. Protestant offered a rate of 15 cents per can in less quantities than one ton, and 10 cents a can for one ton or more from any one shipper daily, provided protestant enjoyed all the milk haul available. It was admitted by applicant that a rate of 10 cents per can had been made to the Insand Ranch on milk in quantities of one ton or more; and by his rate schedule as filed herein, applicant intends to continue this difference in favor of any producer having one ton or more of milk for transportation daily. Notwithstanding this, no witness was produced to show that this rate was objectionable to other shippers of less quantities, or that the shippers were desirous of a change of carriers. The witnesses who did testify expressed satisfaction with both the service and the rates as heretofore maintained by applicant. Protestant Tia Juana Express further contended that the application herein should not be granted because the milk haul is the bulk of the return movement available for this carrier, and because it is able to conduct any service required by the shippers.

The record seems to support the contention of applicant that the service established and sought to be continued is satisfactory to those receiving it. We cannot find from the record, however, that there is any proof that the hauling of general freight is required. The proof rather shows that applicant has conducted, and is conducting, a service satisfactory to the producers of milk in a scat-

tered area, and that it is the desire of these producers that this service be continued. So far as the record shows, protestant Tia Juana Express lost its business because producers turned to a specialized service, which still is their choice. There is no proof that the service of this protestant in transporting general freight between San Diego and Palm City, Imperial Beach, Nestor and San Ysidro is not adequate and efficient, and there is no reason to provide an additional carrier. Aztec City is a new border settlement now without any freight transportation service and applicant's offer to establish freight service to this point should be made available to shippers.

We believe applicant has made a satisfactory affirmative showing as to the necessity of a service for transporting milk from the districts named to San Diego, and for a return haul of dairy feed and supplies to the ranches from which he transports milk, and general freight between San Diego and Aztec City, and for no other service. An order granting the certificate accordingly will be entered.

O R D E R

Clement C. Floersch having made application to the Railroad Commission for a certificate of public convenience and necessity to operate a motor truck service for the transportation of milk, dairy feed and general freight between the San Ysidro and Nestor districts and San Diego, and between the Aztec City district and Imperial Beach district and

San Diego, 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 a motor truck service as proposed by applicant, for the transportation of milk and dairy supplies only, (dairy supplies being limited to feed for cattle and to implements, utensils and articles necessary and useful in the business of dairying) between the San Ysidro, Nestor, Aztec City and Imperial Beach districts and the city of San Diego, and general freight between San Diego and Aztec City, and of no other service, over and along the following route:

From San Diego via National Avenue through National City and Chula Vista to Palm City, Nestor and San Ysidro, and from Palm City to Imperial Beach, and also via main county roads to Aztec City, serving only ranches producing milk in the districts in and about the points named, and transporting general freight to and from Aztec City only; 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 file with this Commission, within twenty (20) days from date hereof, 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 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 15th
day of October 1925.

H. B. Brundage

C. L. Henry

Ernest J. Edwards

Leon Whitall
Commissioners.