

Decision No. 16333

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of C. E. HAMILTON)
for certificate of public convenience and necessity to operate)
an auto truck freight service between Los Angeles and Los Angeles)
Harbor District, on the one hand,)
and Pomona and Ontario, on the other.)

APPLICATION NO. 11887.

Eugh Gordon, for Applicant.

Phil Jacobson, for Keystone Express.
F. W. Granger and Frank Owens, Protes-
tants.

BY THE COMMISSION:

O P I N I O N

C. E. Hamilton has made application to the Railroad Commission for a certificate of public convenience and necessity to operate an auto truck freight service between Los Angeles and the Los Angeles Harbor District, on the one hand, and Pomona and Ontario, on the other.

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

Applicant proposes a service between the termini fixed and over the routes designated in the application, for the transportation of lumber only. He proposes to use, in the service,

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one truck and one trailer of a total capacity of 10 tons, and to devote his service, as far as this commodity is concerned, to the business of the Hammond Lumber Company at Pomona and Ontario. The transportation is conducted under verbal contract with the Lumber Company. Applicant proposes a rate based on the number of thousand board feet transported. He proposes no time schedule, but agrees to respond to any demand upon him for service upon 24 hours' notice. The routes to be traversed are the most direct between termini.

Applicant acquired the business in 1925 by purchase from E. W. Pollock, who had previously conducted the same service for the same industry for eight years.

Applicant was supported in his application by the testimony of R. C. Witter, manager of the Hammond Lumber Company at Pomona, who testified that the movement amounts to two or three truckloads per week, usually in quantities too small for carload shipment by rail, and usually of materials required in haste. The witness testified that applicant makes some deliveries to jobs, but that most of this delivery service is performed by two trucks owned by the Company.

E. W. Pollock, predecessor of applicant, testified that he began operation of service for the Hammond Lumber Company early in 1917, and maintained the service continuously until August, 1925, when he sold the trucking business to applicant. This witness testified that the rates proposed by applicant were the same as had been charged in years past.

Applicant has also conducted, at times when his equipment was not under demand of the industry, a local trucking service in and about Pomona, with the same vehicles. His

counsel contended that the service so maintained in addition to the fixed movement described was never conducted between fixed termini or over a regular route, and hence was not, and is not now, within the jurisdiction of this Commission. In order to safeguard the rights of applicant, however, an amendment to the application was proposed, providing for rates and general trucking service on lumber, lime, cement, fertilizer, bean straw, citrus and deciduous fruits, "and other commodities transported in general trucking service" between any and all points in Los Angeles, Ventura, Riverside, Orange and San Bernardino Counties. For such service, hour rates for truck and trailer are provided.

The testimony of applicant discloses that he has, on several occasions, transported bean straw from Ventura and Orange Counties to Pomona and Ontario and vicinity; that he has also, on similar call, transported commercial fertilizer from Los Angeles and Los Angeles harbor, and that he has hauled fruit from orchards to packing houses.

James H. Black, a rancher at Upland and also agent for a fertilizer concern, testified that he has frequently utilized applicant's service in transporting fertilizer and delivering the same at the orchards, because such process lessened the cost to the growers by eliminating rehandling. Most of the use of applicant's service by this witness has been seasonal, in the Spring, but he has also used his service to some extent in other months. Applicant has also transported fertilizer shipped in carload lots by rail from Pomona to various orchards. In the fall of the year he has hauled bean.

straw from Orange and Ventura Counties, making the same distribution to orchards. In referring to applicant's service over long periods, the witnesses meant that the same service had been performed by his predecessor.

Protestant L. R. Kagerise, proprietor of the Keystone Express, serving Los Angeles and Pomona, testified that he has 14 trucks and 6 trailers available for transporting the commodities, particularly lumber, included by applicant in his application and the amendment thereto as to general trucking service. It appears, however, that this protestant's free pick-up zone in Los Angeles does not include the plant of the Hammond Lumber Company, from which applicant has procured his cargoes.

Protestant F. W. Granger, proprietor of Granger's Truck Line, also serving Los Angeles and Pomona, testified that he has four trucks and two trailers available to transport all the commodities included by applicant, particularly lumber, cement and building materials.

These protestants urged the difference in rates as the measure of applicant's service on lumber. Applicant's rates are based on the number of thousand board feet in each load, while protestant's rates are based upon the ton, and protestants pointed out that the rate of \$4.00 per thousand board feet, as offered by applicant, is much less than the rates offered by protestants, namely, \$3.00 per ton on 10-ton lots, or \$3.50 per ton on less than 10 tons. It was the contention of applicant that two pounds to the board foot was an average weight for lumber, while protestants urged that three pounds was nearer

the weight, especially if the lumber was wet. Mr. Witter explained that the board foot basis was used and had been used for many years because it was an unchangeable trade basis and capable of easy determination. No calculations were presented reconciling the conflicting evidence, but it appears that the two bases of charges are nearly the same in practical results.

It further appears from the record that protestants have been familiar with the service conducted by applicant and his predecessor for many years, without complaint. Applicant's predecessor testified that he believed the haul under contract was exempt from regulation. His successor, the applicant herein, was advised that the movement between fixed termini was not exempt, and hence filed the present application. We believe a careful review of the record sustains applicant in his request for a certificate for the movement of lumber and fertilizer between the Los Angeles harbor district and the city of Los Angeles, on the one hand, and Pomona and Ontario on the other. There is nothing in the record to impeach the statement of applicant and his predecessor that they intended at all times to comply with the law, but did not make application until advised by counsel that a certificate was necessary. As to the other movements conducted by applicant and his predecessor, the record appears clear that these were incident to the business of "on call" trucking, that applicant has not offered any service as to these commodities between fixed termini or over a regular route, and that what movements he has made have been on demand and at infrequent intervals.

We therefore find as a fact, upon the record herein, that public convenience and necessity require the operation of

a freight truck service as proposed by applicant, for the transportation of lumber and fertilizer only between Los Angeles and the Los Angeles harbor district, and Pomona and Ontario. An order granting a certificate therefor accordingly will be entered.

O R D E R

C. E. Hamilton having made application to the Railroad Commission for a certificate of public convenience and necessity to operate an auto truck freight service between Los Angeles and Los Angeles harbor district, on the one hand, and Pomona and Ontario, on the other, 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 automobile truck freight service as proposed by applicant herein, for the transportation of lumber consigned from or to the Hammond Lumber Company, under contract therefor, and also for the transportation of fertilizer, between Los Angeles and Los Angeles harbor district and Pomona and Ontario, over and along the following routes:

Route 1: Between Los Angeles Harbor and Pomona and Ontario: Via Truck Boulevard to Compton, thence east via main paved highway to Clearwater, northerly to Downey, Rivera and Pico, thence via Valley Boulevard to Pomona, thence via Holt Avenue to Ontario.

Route No. 2: Between Los Angeles and Pomona and Ontario: Via Valley Boulevard to Pomona, thence via Holt Avenue to Ontario; 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 a period of not to exceed twenty (20) days from date hereof; and shall commence operation of the service hereby 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 20th day of March 1926.

H. B. Brundage
C. C. Deane

Leon Whitwell

Commissioners.