Decision No. 18797

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of J. H. COTTRELL for a certificate of public convenience and necessity to operate passenger and light express service between the City of San Diego and Tecate, in the State of California, and intermediate points.	Application No.8160
In the Matter of the Application of BORDERLAND EXPRESS, Wiley J. Gibson, Owner, for a certificate of public convenience and necessity authorizing the extension of its service to include Tecate and Live Oak Springs.	Application No.12654

H. J. Bischoff, for Wiley J. Gibson, Applicant in Application No.12654,
J. H. Cottrell, in propria persona, Applicant in Application No.8160,
E. L. Seavoy, for Pickwick Stages System, Protestant in Application No.8160.

WHITSELL, Commissioner -

OPINION

J. H. Cottrell, in his second supplemental application as above entitled has petitioned for an order amending this Commission's Decision No.11725 wherein applicant was authorized to operate automobile stage line as a "common carrier of passengers and freight between San Diego and Tecate, serving the intermediate points of Spring Valley, Jamul, Dulzura, Barrett and Potrerro, the freight being limited to 250 pounds in any one day with the exception of milk and cream which may not exceed 250 pounds in any one day." The amendment seeks the elimination of the weight restriction and also the removal of the restriction contained in said decision wherein only one stage, then in use, was to be used in the service authorized.

The application alleges that petitioner has, and is now operating in accordance with the terms of the certificate now held by him, and that the communities served require the removal of the restrictions, previously noted, in order that an improved daily

service may be rendered.

Wiley J. Gibson, operating under the fictitious name of Borderland Express, has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the extension of his present authorized freight service between San Diego and Holtville to include the towns of Tecate and Live Oaks. Applicant alleges that these towns are about two miles distant from the main route used on the San Diego-Holtville run and have been served by him for some time under the impression that such service was authorized under the certificate held and that his tariffs have included these points. No other public transportation facility is available except that rendered by J. H. Cottrell (applicant in Application No.8160). When applicant was advised by the Commission that this service had not been authorized the instant application was filed, seeking authorization for the continuation of the service heretofore rendered.

A public hearing was held at San Diego at which time these applications were consolidated for the purpose of receiving evidence and for decision, were duly submitted and are now ready for decision.

Mr. W. H. Gibson, owner of Borderland Express, in his testimony confirmed the allegations contained in the application. Tecate is on the line between California and Mexico. Rail service is available for the portion of the town in Mexico but due to the necessity of custom house requirements it is more convenient for traffic destined to that portion of Tecate in California to move same by truck.

It is proposed to operate under the same rules and regulations, tariffs of rates, and time schedules now on file with the Commission and erroneous only in that Tecate and Live Oak are included.

Mr. J. H. Cottrell, in his own behalf, testified that he did not expect at any time to have over 1500 pounds of freight on his truck and that he would not crowd or inconvenience passengers who might be travelling on his stage, but that he held himself

out to provide for his passengers' confort in the future, if his petition were granted, as he had in the past.

A stipulation was entered into with Pickwick Stages System that no enlargement of the present passenger service rights was sought and with that stipulation the Pickwick System protest was withdrawn. Borderland Express made no protest to the granting of a certificate when a stipulation was entered into that the maximum movement would be 1000 pounds from anyone consignor to any one consignee.

Three merchants from Tecate testified to the need for service as herein proposed by both applicants. It appears that the service offered meets the requirements of these communities.

After consideration of the evidence in these matters, I am of the opinion and hereby find as a fact, that the service offered meets the issue of public convenience and necessity, and as such should be authorized in conformity to the following recommended order.

O R D E R

A public hearing having been held in the above entitled proceedings which were consolidated for hearing and decision, were duly submitted, and the Commission being now fully advised and basing its Order on the finding of fact set out in the Opinion which precedes this Order,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the extension of the present operative right for the transportation of freight by Wiley J. Gibson, operating under the fictitious name of Borderland Express, to include the communities at Tecate and Live Oak, said service to be rendered in accordance with the rates as appearing in C.R.C. No.4 of tariffs of Borderland Express, now on file with the Commission.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FURTHER DECLARES that public convenience and necessity requires that Decision No.11725, decided February 27, 1923, on Application No.8160, wherein J.H.Cottrell was granted a certificate, be amended insofar

as that clause which restricts the weight of freight to be transported, and in lieu thereof that transportation of freight between San Diego and Tecate and intermediate points shall be confined to single shipments not exceeding 1000 pounds from any one consignor to any one consignee, and with the further provision that no enlargement of the passenger service rights is herein authorized.

IT IS HEREBY ORDERED that certificates of public convenience and necessity be and the same are hereby granted to Wiley J. Gibson, operating under the fictitious name of Borderland Express, and to J. H. Cottrell in accordance with the above declarations, and subject to the following conditions:

1- Applicants shall file their written acceptances of the rights and enlargements herein authorized within a period of not to exceed ten (10) days from date hereof.

2- Applicant Wiley J. Gibson, shall file, in duplicate, within a period of ten (10) days from date hereof, a written statement stating that he adopts the tariffs of rates, rules and regulations (C.R.C. No.4) and time schedules now on file with the Commission as to the service herein authorized.

3- Applicant J. H. Cottrell shall file, in duplicate, within a period of twenty (20) days from date hereof, tariffs of rates, rules and regulations in accordance with the statements and rates set forth in his second supplemental application, said tariffs of rates, rules and regulations to be designated C.R.C. No.2, and incorporate therein C.R.C. No.1 now on file with the Commission and cancel said C.R.C. No.1.

4- The rights and privileges herein granted to applicants 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.

5- No vehicle may be operated by applicants under the authority hereby granted unless such vehicle is owned or is leased by applicants under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes than hereinabove stated the effective date shall be twenty (20) days from and after date hereof.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of June, 1926.

H. D. Rudgear

C. L. Seavey

Leon O. Whitsell

COMMISSIONERS.