

Decision No. 17452

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application
of J. M. WARD, doing business
under the name of Ward Bros., for
certificate of public convenience
and necessity to operate freight
service between Aptos and Davenport,
Santa Cruz, Oakland and San Fran-
cisco.

APPLICATION NO. 12468.

B. D. M. Greene, for Applicant.

Gwin H. Baker, for Highway Transport Com-
pany, Protestant.

Edward Stern, for American Railway Express,
Protestant.

L. N. Bradshaw, for Southern Pacific Railway,
Protestant.

H. A. Encell and J. A. Miller, for Coastside
Transportation Company, Protestant.

Wyckoff & Gardner and Devlin & Brookman, for
Clark Bros., Protestants.

BY THE COMMISSION:

O P I N I O N

In this proceeding J. M. Ward, doing business under
the name of Ward Bros., has petitioned the Railroad Commission
for an order declaring that public convenience and necessity
require the operation by him of freight service between Aptos
and Davenport, Santa Cruz, Oakland and San Francisco.

A public hearing herein was conducted by Examiner
Williams at Santa Cruz.

Applicant proposes the continuance of a service begun by him five years ago for the transportation of farm products along the highway between Aptos and Davenport through Santa Cruz, and from terminal and intermediate points, including Santa Cruz, to San Francisco and Oakland. Applicant is the owner of four trucks and proposes a pick-up service, within a half-mile of the highway, for fruits and vegetables produced in a region intensively devoted to such industry.

According to his testimony, applicant now conducts transportation under twenty-six written contracts with shippers, and he desires to convert his business into that of a common carrier. The principal commodities transported by him are eggs, poultry, potatoes and field vegetables, destined for the markets of San Francisco and Oakland, with a single return haul, under contract, of groceries for the Piggly Wiggly Company at Santa Cruz. Applicant formerly operated under the provisions of the so-called Crittenden Amendment to the Auto Stage and Truck Transportation Act, and it was subsequent to the nullification of this amendment that he undertook the operation of service under contracts.

Applicant presented, as a witness in support of his application, E. M. Huddleson, traffic chairman of the Santa Cruz Chamber of Commerce, who testified that the service now and heretofore performed by applicant is and has been the most efficient means available to growers and shippers for the marketing of their products with best financial returns. He pointed out that by reason of this service, picking can be continued in the fields until almost dark, and thus the fresh fruits and vegetables are ready for transportation soon after harvesting.

and in the best possible market condition.

Testimony of B. Francisconi, an artichoke and sprout grower cultivating 70 acres near Davenport; Louis Schenone, cultivating 25 acres of artichokes and sundry vegetables near Capitola; and, by stipulation, similar testimony by P. Neri, G. Puccini, G. Bargiacchi, A. Purocini, P. Rinaldi, J. Miachi and others, cultivating ranches of various acreage at Davenport, Aptos and intermediate points, was quite emphatic that the service performed by applicant is absolutely necessary to the successful cultivation and marketing of a very large area dependent upon this transportation for its prosperity. A petition signed by fourteen commission merchants of San Francisco, requesting the granting of the certificate sought because of the dependability of applicant and his promptness in reaching the market and delivering the commodities in first-class condition, was filed at the hearing. Also a petition was filed, signed by about thirty growers in the vicinity of Santa Cruz between Davenport and Aptos, asserting that the continuance of applicant's service is a necessity to them and expressing complete satisfaction with the service heretofore given.

Applicant stipulated that no commodities would be transported from points east of Aptos Creek, and upon this stipulation the protest of Clark Bros. was withdrawn.

Upon stipulation by Highway Transport Company that it withdrew its application for authority to transport berries, fresh fruits, vegetables, poultry and eggs from Aptos and Santa Cruz and all intermediate points, to San Francisco, applicant withdrew his protest to the granting of Highway Transport Company's application (No. 12134), and thereupon the protest of the

Highway Transport Company to the granting of the instant application was withdrawn.

The granting of the application was opposed by the Southern Pacific Railway, American Railway Express and Coastside Transportation Company. Protestant Southern Pacific Railway maintains regular freight service between the points sought by applicant, which service, however, provides no pick-up, as does applicant's. All freight must be delivered to protestant's stations. Protestant American Railway Express operates seven services daily in each direction via Watsonville Junction and San Jose and maintains a free delivery service in Santa Cruz over a four-mile zone, also a free delivery in San Francisco and Oakland. This service, however, is not used by applicant's patrons, as they are outside the pick-up and delivery zone of protestant in Santa Cruz and could only make use of the service by delivering shipments to protestant's terminal in Santa Cruz for re-shipment by rail. While the rail services appear adequate and efficient as such, applicant performs a service in addition which appears to be the choice of a substantial portion of the public and a necessity to them.

Protestant Coastside Transportation Company operates between San Francisco and Santa Cruz by way of Pescadero, serving between Davenport and Santa Cruz. This service requires transfer at Pescadero and is conducted partially over highways that are at present unimproved and at times impassable, particularly south of Pescadero. Exhibits filed by this protestant do not indicate what, if any, quantity of the commodities which applicant seeks authority to transport have been moved by its

service from Davenport south, and its protest, as against the efficient and developed service of applicant, does not present good reason for denying or restricting the authority sought by applicant.

Outside of applicant's own testimony that he is conducting a back-haul of groceries and farm necessities between termini, including a haul of groceries under contract, there is nothing in the record to sustain the need of a return movement, except the general testimony of witnesses as to the need of the continuance of all the service which applicant has been performing. The return movement of "farm necessities" may reasonably be included in applicant's certificate, with the understanding that "farm necessities" are limited to the implements and articles of merchandise used exclusively in the business of husbandry, and do not include personal or domestic articles not exclusively so used. We do not believe applicant is entitled, under the record, to a certificate authorizing him to transport groceries as a return movement.

We therefore find as a fact, upon the record herein, that public convenience and necessity require the operation by applicant of an auto freight service as proposed by him, subject to the modifications set forth herein, and that a certificate therefor should be granted. An order will be entered accordingly.

O R D E R

J. M. Ward, doing business under the name of Ward Bros., having petitioned the Railroad Commission for an order declaring that public convenience and necessity require the

operation by him of an auto freight service between Aptos and Davenport, Santa Cruz, Oakland and San Francisco, 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 by applicant of an auto freight service for the transportation of farm products between Aptos and Davenport, Santa Cruz, Oakland and San Francisco, without intermediates and without back-haul except farm necessities, it being understood that the term "farm necessities" includes only implements and articles of merchandise used exclusively in the business of husbandry, and not personal or domestic articles of merchandise not exclusively so used, with the privilege of pick-up and delivery within one-half mile on either side of the highway traversed; provided, that no shipments may be received or discharged east of Aptos Creek - over and along the following route:

Between Aptos and Santa Cruz and between Davenport and Santa Cruz over the State highway; between Santa Cruz and San Francisco via Los Gatos, Glenwood, Saratoga, Sunnyvale, Mountain View, Palo Alto and San Mateo; between Santa Cruz and Oakland via Los Gatos, San Jose, Milpitas, Alvarado, Mount Eden, San Lorenzo and San Leandro; 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 13th
day of October 1926.

H. B. Burdige

C. Sawyer

Leon O. White

Thos. J. Barrett

COMMISSIONERS.