

Decision No. 17452

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application }
of CLARK BROS. for an extension }
and enlargement of their operative }
rights to operate freight service }
between Watsonville and San Jose }
and San Francisco. }

APPLICATION NO. 12636.

Wyckoff & Gardner and Devlin & Brockman, by
H. C. Wyckoff and D. Brockman, for Applicants.

G. H. Baker, for Highway Transport Company,
Protestant.

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

Edward Stern, for American Railway Express,
Protestant.

James A. Miller, for Coastside Transportation
Company, Protestant.

B. D. M. Greene, for Ward Bros., Protestants.

A. W. Sans, City Attorney, for City of Watson-
ville, Interested Party.

BY THE COMMISSION:

O P I N I O N

A. B. Clark and Kenneth C. Clark, co-partners doing
business under the name of Clark Bros., have petitioned the
Railroad Commission for an order declaring that public conve-
nience and necessity require an extension and enlargement of
their operative rights to operate freight service between
Watsonville and San Jose and San Francisco.

Public hearings herein were conducted by Examiner Williams at Santa Cruz, San Jose and Watsonville.

Applicants now possess a certificate granted under Decision No. 15477, authorizing the transportation of fruits and vegetables from Watsonville and points as far west as Aptos and as far east as Betabel, to San Jose, San Francisco and Mountain View. The service at present is a one-way transportation of farm products, with no return movement.

In the instant application the partnership seeks to enlarge its business by adding the transportation of general freight of all kinds in both directions between termini, and by extending this freight service to all points between Aptos on the west and Betabel on the east.

Applicants propose a separate and additional schedule of rates, as shown in their Exhibit "A" attached to the application. They propose to establish depots at San Francisco and San Jose for the reception of freight, and to maintain receiving hours from 8:00 a. m. to 5:00 p. m. daily except Sundays and holidays.

During the hearings applicants amended their application to include pick-up and delivery service in the Pajaro Valley; also by fixing the rates from Aptos, Betabel, Aromas and all intermediate points, other than Watsonville, as identical with the pick-up rates from Watsonville; and by providing for pick-up and delivery in the Pajaro Valley outside the city of Watsonville and off the highway at an additional charge, above the pick-up rate, of 10 cents per 100 pounds per mile or fraction thereof, with a minimum of

50 cents; the off-highway pick-up to be at the carrier's option and convenience.

During the hearings protestant Highway Transport Company withdrew all parts of its application in conflict with applicants' as to berries, green fruits, vegetables, eggs and poultry originating at points between Aptos and Betabel, and also withdrew all objection to applicants' proposed general freight service. Upon this stipulation the protest of Highway Transport Company was withdrawn. Applicants also stipulated with protestant Ward Bros. that no service would be given west of Aptos Creek, and upon this stipulation the protest of Ward Bros. was withdrawn. Early in the proceeding the protest of the Coastside Transportation Company was withdrawn, there being no conflict between this protestant's operations and the present or proposed operations of applicants.

The granting of the application was protested chiefly by the Southern Pacific Railway and American Railway Express.

Applicants' chief showing as to necessity was made at Watsonville through the testimony of P. A. Callaghan, Robert K. Vickery, W. E. Dolan, H. D. Friermuth, E. D. Traulson, D. E. Dodge, Alvin B. Anderson, O. O. Eaton, W. L. Jepsen, R. B. Cozzens, L. F. DeHane, Thos. M. Wright, E. J. Purfill, Gordon Everett, Stephen Scurich, Eugene H. Phillips, Bert Durant and John Stanovich; and, by stipulation, through similar testimony from nine other witnesses present who were not called to the stand.

These witnesses represented ranchers, wholesale butchers, blacksmiths, highway contractors, commercial spray manufacturers, oil companies, vinegar factories, canneries, and dealers in automobiles and automobile supplies, hardware, plumbing, lumber and building materials, packing house supplies and electrical supplies.

In general, the testimony of these witnesses was to the effect that an over-night service from San Francisco and San Jose for general freight was needed and would be used by them, and an examination of the witnesses disclosed a real volume of tonnage to be expected for the proposed service. We believe the showing of public necessity, on the basis of the testimony of these witnesses, is satisfactory, in spite of the testimony introduced on behalf of rail protestants, especially in view of the fact that the rates proposed by applicants are approximately 25 per cent higher than the rail rates, although from 25 to 100 per cent lower than those of protestant American Railway Express.

Freight service over the Southern Pacific into the region which applicants are seeking authority to serve is daily from San Francisco, but no freight is received after 4:00 p. m. at the San Francisco freight terminal. The freight is moved direct to Watsonville, from which point it is distributed east and west on the following day. The objection to this service on the part of the public, as shown by the testimony of witnesses, is due to the lack of store-door delivery, consignees being required to haul shipments from the car side when bulk is broken. Applicants propose direct distribution from their trucks to the consignees. The

testimony shows that a great deal of the business that would be enjoyed by applicants is already moving irregularly by truck, and by private arrangements, and witnesses testified that they preferred a dependable authorized carrier in place of the present methods.

Protest by the Southern Pacific Railway is based not only on adequacy of its own service and lack of necessity for that proposed by applicants, but on its claim that the application is, in effect, an equalization of shipping rates into the Watsonville and Santa Cruz regions, to their disadvantage. It appears that the Juillard-Cockroft Company, wholesale grocers of Watsonville, found itself able to make deliveries from Watsonville to points west to Santa Cruz and east to San Juan by its own trucks (or by rail) at a rate of 15 cents per 100 pounds, which is also fourth class rail rate. The rail rate from San Jose to similar points is 30 cents fourth class. To meet the competition of the Watsonville wholesaler, San Jose and (subsequently) San Francisco shippers established a freight allowance of 15 cents on all shipments. It is now contended by protestant that establishment of truck service as proposed will deprive Watsonville of its advantage of geographical location by permitting an "equality" of rates. Protestant's point does not seem to be supported by the record. The rate offered by applicants is 25 cents per 100 pounds on groceries from San Jose to all points, a fact known, apparently, to San Jose shippers, who frankly admit they cannot themselves make deliveries at the

15-cent rate now charged. On most of the groceries concerned, the rail rate from San Jose is 20 cents. and from San Francisco 40 cents. We cannot find that this point as to "equalization of rates" has the real foundation or the effect protestant asserts.

This proceeding is to determine the need of the service proposed and the subject of rates is incidental. Applicants have offered a schedule of charges that prima facie appears to be reasonable. There is no proof by protestants that this schedule of itself presents unjust, unreasonable or discriminatory charges for the service to be performed. Hence we believe this portion of the protest to be misdirected and to be fully answered by the decision of this Commission in the case of San Francisco Chamber of Commerce vs. Southern Pacific Company (Decision No. 3847 on Case No. 485, C. R. C. No. 11, pp. 867-883), wherein this language (quoted by protestant) is found:

"The meaning and intent of this section of the Act (Sec. 19) seems perfectly clear, and no matter how averse this Commission may feel toward the approval of rates tending to disturb established communities, it cannot, under the law, prevent the charging of rates which in and of themselves are just and reasonable. It is not our office to equalize commercial conditions and in the order in this case we can only give the city of Redding just and reasonable rates."

W. E. Cockroft of the Juillard-Cockroft Company, appearing on behalf of protestant Southern Pacific Company, testified that the firm distributed from 800 to 1000 tons a month, and that its gross business exceeded \$2,000,000 annually. This firm uses rail shipments from other points exclusively, being situated only a few hundred feet from the Southern Pacific ter-

minal. Mr. Cockcroft testified that the freight service is satisfactory and that he has the advantage of trap-car rates as well as delivery at a spur alongside his warehouse.

In support of their ability to give service, applicants presented Mr. A. B. Clark, one of the partners, who testified as to many demands made upon them for return transportation from San Francisco and San Jose. In the past applicants have built up quite a large business, which was begun under the exemptions of the so-called Crittenden Amendment, and they possess abundant equipment for the service proposed. A terminal is now maintained at Watsonville and the service is devoted to the agricultural and horticultural industries between Aptos and Betabel. During the testimony of Mr. Clark he asked permission to amend his rate structure by inserting Item 771, reading "\$1.25, \$1.00, 65 cents and 50 cents" for the four classes.

Applicant Clark testified that the one-way service now maintained between Watsonville and adjacent points, and San Jose and San Francisco, has been operated at profitable one-way rates. The schedule of rates proposed in the instant application is for the additional service, and, as pointed out before, is approximately 25 per cent higher than existing rail rates for the same movements. It appears from this statement that a certificate, if granted herein, will furnish to applicants a large volume of business to be transported on trucks which now return empty to Watsonville, and that the rates provided in the instant application, combined with those already existing under Decision No. 15477, may produce revenue

far in excess of either reasonable return or reasonable rates for the service performed. We are of the opinion that a review and readjustment of the rates may be justified, in order to confer proper benefit upon the shippers who have for more than a year maintained a one-way operation at rates profitable to the carrier. For this reason the order herein will provide that applicants segregate their revenues from each operation and report to this Commission, at the end of each thirty-day period during the first six months of operation, the revenues from each class of service, for the purpose of informing the Commission as to whether a review of the rate structure will be justified.

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

O R D E R

A. B. Clark and Kenneth C. Clark, co-partners doing business under the name of Clark Bros., having petitioned the Railroad Commission for an order declaring that public convenience and necessity require an extension and enlargement of their operative rights to operate freight service between Watsonville and San Jose and San Francisco, public hearings 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

operation of the service proposed by applicants, for the transportation of general freight between Watsonville and San Jose and San Francisco and between Watsonville and points west of Aptos Creek, and between Watsonville and Betabel, including pick-up and delivery service in the Pajaro Valley, as an extension and enlargement of applicants' present service as authorized by Decision No. 15477, over and along the following route:

Via Santa Cruz County highway from Watsonville to the junction with the State highway near San Juan, via Aromas and Riverside road; thence over the State highway to San Jose, and thence over the State highway to San Francisco; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same is hereby granted, subject to the following conditions:

- I. Applicants shall file with this Commission, within ten (10) days from date hereof, their written acceptance of the certificate herein granted, together with a stipulation that said certificate is accepted as an extension and enlargement of their present operative rights and not as a new or separate right.
- II. Applicants shall file, in duplicate, time schedules and tariff of rates identical with those 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.
- III. The rights and privileges herein authorized shall not be sold, leased, transferred or 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.

IV. 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.

V. Applicants shall segregate the revenue derived from their present operation and the additional revenue derived from the extension herein granted, and report to this Commission each thirty (30) days for the first six (6) months of operation, the revenue from each, with sufficient detail to inform the Commission of the business done by each operation.

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. Brundage
C. L. Seaver

Leon A. White
Thos. B. Lott
COMMISSIONERS.