

Decision No. 17586

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of  
SERVICE MOTOR EXPRESS for a certifi-  
cate of public convenience and neces-  
sity authorizing applicant to extend  
and enlarge, in certain respects, its  
existing auto truck operating rights,  
and for the removal of certain re-  
strictions in connection with appli-  
cant's operating rights, and to exer-  
cise said additional operating rights  
as an extension to applicant's exist-  
ing operating rights.

ORIGINAL

APPLICATION NO. 11820.

In the Matter of the Application of  
SERVICE MOTOR EXPRESS for a certifi-  
cate of public convenience and neces-  
sity authorizing it to operate an  
automobile truck service for the  
transportation of fresh fruits and  
vegetables to the canneries and pack-  
ing houses at Riverside, Arlington,  
Wineville, Colton and other points  
when originating at farms and groves  
within a radius of thirty-five miles  
of said destinations, and to haul  
cannery and packing house supplies  
from Los Angeles, Vernon and Los An-  
geles harbor to said canneries and  
packing houses, etc.

APPLICATION NO. 11928.

H. W. Kidd, for Applicant.

L. C. Zimmerman, for Southern Pacific Railway,  
Protestant.

C. E. Jones, for Pacific Electric Railway Com-  
pany, Protestant.

M. Thompson, for American Railway Express, Pro-  
testant.

Phil Jacobson, for Keystone Express, Protestant.

BY THE COMMISSION:

O P I N I O N

The above numbered applications were originally filed  
by the Service Motor Express, a partnership composed of L. T.

Fletcher and Elmer Tremble, but all the interests of the partnership have been transferred by authority of this Commission to Motor Service Express, a corporation, and in these proceedings, which were consolidated for hearing and decision, applicant asked the substitution of the corporation as applicant in place of the partnership, and such substitution was permitted.

In Application No. 11820, applicant requested authority to enlarge and extend its operations by the addition of deliveries to all points between the east city limits of Ontario and Riverside, with a pick-up and delivery zone three miles on either side of the highways traversed, and also to perform similar service between Riverside and San Bernardino. By Decisions No. 6966 on Application No. 4712 and No. 8403 on Application No. 5887, applicant was restricted from the local service now applied for.

In Application No. 11928 as amended at the time of hearing, applicant asks permission to establish, independent of its other operations, a demand service for the transportation of sugar, cans, cannery and packing house supplies from Los Angeles harbor (Wilmington and San Pedro), the city of Los Angeles and the city of Vernon, to canneries and packing houses at Riverside, Wineville, Grand Terrace and Highgrove; to transport canned goods from canneries at Riverside and Wineville to Los Angeles and Los Angeles harbor, with pick-up and delivery in both the harbor and the industrial districts of Los Angeles; and to transport citrus fruits from the packing houses at Highgrove, Grand Terrace and Riverside to Los Angeles harbor and the city of Los Angeles within zones prescribed.

Rates for the different services are provided in Exhibit "A" attached to the original application. These rates were amended at the hearing to insert the words "both inclusive" where necessary in paragraphs 4 and 5 of proposed rates on fresh fruits and vegetables, and by the elimination of blocks showing rates on shipments weighing between 20,000 and 32,000 pounds.

Public hearings herein were conducted by Examiner Williams at Riverside.

In support of the removal of the restrictions against conducting a local business between Riverside and San Bernardino and between Ontario and Riverside, applicant produced A. B. Cummings, manager of the Highgrove Fruit Association; Guy A. Little, manager of applicant's Riverside office; Charles E. Lamb, with the Hausen Construction Company, having a rock quarry four miles east of Riverside; L. V. McFarland, owner of a filling station at Campo Garage; F. C. Marvin, garage man; C. A. Edgill, garage owner; W. Bisel, general merchandise of Glen Avon Heights; Chas. Faulhaber, general store, Wineville; Mr. Fuller of Highgrove; G. C. Garner, garage owner at Highgrove; and F. F. Ogden, general merchandise, Highgrove.

According to these witnesses, they receive shipments from Los Angeles and from points east of Ontario, and make shipments from Riverside to points east of Ontario and to points near the highway between Riverside and San Bernardino. Their testimony is satisfying that there is a need for the service proposed by applicant.

Although a number of protests were filed by other carriers, no testimony was introduced by any of the protestants except on cross-examination of witnesses.

It appears from the record that applicant's service is the only automobile freight service available between Ontario and Riverside, and there seems to be little ground for the protest of other carriers as to the extension to this region of pick-up and delivery service as proposed. It also appears that the distance between the corporate limits of Riverside and San Bernardino is something less than a mile; and while there are few shippers to be served in this distance, there appears to be no good reason why applicant should not be permitted to make pick-up and delivery, as its service includes both Riverside and San Bernardino.

In Application No. 11928, in which authority is sought to establish demand service separate from the other authorized service of applicant, the testimony of a number of witnesses was given in support of the need for such service. It appears from the statement of L. T. Fletcher, President and general manager of applicant corporation, that this service has been performed by applicant for several years, particularly during the period when the Crittenden Amendment to the Auto Stage and Truck Transportation Act was recognized as valid. Frank R. Davis, manager of the Yucaipa Valley Fruit Company, Edgar T. Wall, of McDermott & Wall, packers, growers and shippers, Riverside; Frank Herman of Long Beach, vice-president of the Arlington Cannery Company; R. J. Asbury, assistant manager of the Riverside-Arlington Fruit Exchange; and A. G. Burch, fruit buyer and shipper at Banning, Yucaipa and Hemet, all testified as to the previous use of applicant's service and to the requirement of this service in future.

It appears from the testimony of these witnesses that packers and shippers of citrus and other fruits employ trucking

companies during the season and from time to time in the transportation of their products to Los Angeles and Los Angeles harbor. Frequently on return movements these truckmen bring back empty cans and packing house supplies. A large part of this transportation consists of shipments of merchandise and is "on call". In this distribution of "on call" business applicant has shared. At the time the application herein was filed, it appeared that such movements could not be conducted legally without certificate from this Commission. Subsequent to the filing of the application, however, the Commission issued its Decision No. 15818 on Application No. 11303 of Ben Moore, in which it held that the radial operations proposed were indefinite and without fixed termini or regular routes, thereby constituting an operation which was not within the jurisdiction of the Commission. Applicant amended the application by eliminating all radial operations. Subsequent to the hearing on these applications, the United States Supreme Court, in the case of Frost & Frost vs. Railroad Commission, held that this Commission has no jurisdiction over private carriers, but only has jurisdiction over common carrier operations conducted between fixed termini or over regular routes.

The testimony herein shows the movements proposed by applicant to be occasional "on call" movements, and not between fixed termini or over regular routes, with the exception of the movement of citrus fruits and canned goods between points in and about Riverside, and Los Angeles and Los Angeles harbor, with a return movement of packing house supplies, which seems to be continuous throughout the year. We believe the proof is sufficient

to justify the granting of a certificate for such movements and an order will be entered accordingly.

#### O R D E R

Motor Service Express, a corporation, successor to Service Motor Express, a partnership, applicant herein, having petitioned the Railroad Commission for an order declaring that public convenience and necessity require the removal of certain restrictions upon applicant's present operation, and the transportation by applicant of certain commodities between Riverside, Wineville and other points, and Los Angeles, Vernon and Los Angeles harbor, 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 the establishment and operation by applicant Motor Service Express of pick-up and delivery service between the east line of Ontario and Riverside and between Riverside and San Bernardino, as an extension and enlargement of applicant's present authorized service; and also, of service on demand for the transportation of citrus fruits and canned goods from Riverside, Wineville, Highgrove and Grand Terrace, to Los Angeles and Los Angeles harbor, with a return movement of sugar and packing house supplies, including cans, shock, metal strapping, wraps, paste and inks, from Los Angeles and Los Angeles harbor

and Vernon to canneries and packing houses at said points, and for no other service, as an extension and enlargement of applicant's present authorized service, over and along the following route:

Between Los Angeles and Riverside over the Valley Boulevard via Wineville; between Riverside and Grand Terrace and Highgrove via Highgrove-Redlands Road; between Los Angeles and Los Angeles harbor over the Harbor Truck Boulevard and Main Street; 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 ten (10) days from date hereof, its written acceptance of the certificate herein granted as an extension and enlargement of its present operative rights, and not as a new or separate right.
- II. Applicant shall file, in duplicate, within a period not to exceed twenty (20) days from date hereof, tariff of rates and time schedules, such tariff of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty (60) days from the date hereof.
- III. 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.
- IV. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

