

ORIGINAL

Decision No. 17857

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 H. E. HOLMES and H. P. HOLMES, co-
 partners, for a certificate of public
 convenience and necessity to operate
 a freight truck service between San
 Francisco, Robertsville, San Jose,
 Los Gatos and intermediate points
 under the name of HOLMES EXPRESS.

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) Application No. 12354.
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Thelen & Marris, for Applicants,
 W. H. Robinson and Chas. A Beck, for
 Pioneer-Gibson Express and H. O. Crymble, Protestants,
 Gwyn H. Baker, for Highway Transport Company, Protestant,
 E. G. Shoup, for Peninsular Railway Company, Protestant,
 H. W. Hobbs, for Southern Pacific Company, Protestant,
 T. A. Pierce, for Western Pacific Railroad Co. Protestant.

BY THE COMMISSION:

O P I N I O N

In this proceeding H. E. Holmes and H. P. Holmes, co-
 partners, seek a certificate of public convenience and necessity
 authorizing them to operate, under the name of Holmes Express,
 an automobile truck service for the transportation of freight as
 a common carrier between San Francisco, Robertsville, San Jose,
 Los Gatos and intermediate points. Applicants allege that they
 have heretofore been engaged in transporting freight as private
 carriers and by filing this application do not dedicate their
 property to public use, but reserve the right to continue as

private carriers until permitted by the Commission to enter the field as common carriers. The proposed rates, time schedules, and a description of applicants' equipment accompany the application.

Public hearings were held before Examiner Austin at San Francisco and San Jose, when evidence was offered, the matter submitted, and it is now ready for decision.

The applicants, Henry E. Holmes and Henry Perry Holmes, are co-partners, doing business under the name of H. E. and P. W. Holmes, having succeeded the firm formerly composed of Henry E. and Philbrook W. Holmes, the present partnership retaining the former name for business reasons, and proposing also to operate under the name of Holmes Express. At San Francisco applicants own and maintain a terminal station located at 234 Seventh Street, consisting of a brick building, where are situated loading platforms, scales, machinery for repairing equipment and a truck body building plant, their investment in these facilities aggregating approximately \$72,000. The equipment to be used consists of five trucks and one trailer, worth approximately \$17,000, and having a total rated capacity of 14½ tons, all of which is in good condition. This will be used for both pick-up and line-haul service. Applicants have facilities for repairing equipment and have sufficient means to purchase additional trucks when needed.

Freight originating at San Francisco will be picked up in the afternoon and taken to applicants' terminal where it will be unloaded from the pick-up trucks and reloaded into the line-haul trucks in such a manner as to facilitate its ready distribution. The truck carrying freight destined to San Jose

itself will leave San Francisco at 4:30 a.m. and trucks carrying freight destined to intermediate points will leave at 6:00 a.m., the freight being delivered early in the morning without any transfer or distribution at the point of destination. This is the present practice which applicants propose to continue. Freight of all descriptions will be handled excepting furniture, certain valuable articles and fresh fruit, vegetables, produce and high explosives. At present applicants specialize in the transportation of groceries, grocers' sundries, druggists' sundries, wholesale drugs and paper. The present rates, which applicants propose to continue, are: Upon southbound shipments 32½ cents per 100 pounds, minimum 33 cents, and minimum weight, 100 pounds, applicable upon all commodities and between all points; and northbound, 17½ cents per 100 pounds upon shipments weighing 2000 pounds or more, delivered to carrier at the curb. In addition, certain charges are imposed for pick-up or delivery service beyond the free delivery limits specified in the tariff. It will thus be seen that in both directions, blanket rates are applicable. Mr. H. E. Holmes testified that applicants had earned a substantial profit under these rates during 1925, and expected them to yield a profit should applicants be permitted to operate as a common carrier. The present partnership and its predecessor have been engaged in a transportation service between these points, ostensibly as private carrier, since February, 1923, having entered into leases or contracts with all shippers, which provided rates similar to those now proposed to be imposed.

Applicants called 29 witnesses from San Francisco, San Jose and other points proposed to be served, of whom five were wholesale druggists, four were wholesale paper dealers,

six were retail druggists, and the rest included representatives of various wholesale and retail businesses. In addition to the witnesses called, the testimony of a druggist at San Jose was included in the record by stipulation, and another druggist, called by protestants, endorsed the applicants' service. All of these witnesses testified that applicants' service was satisfactory, and some stated that it was superior to that of protestants, Highway Transport Company, and Pioneer-Gibson Express, in that applicants provided a more convenient pick-up service, their delivery service ^{was} more expeditious, dependable and convenient, and that fewer delays were encountered. In a few instances it was asserted that shipments moving over protestants' lines had been damaged. One witness stated that applicants' packing requirements were less exacting, and another testified that their uniform rate simplified billing operations. Still others objected to the delay which they said was encountered in the transfer of shipments by the Highway Transport Company and Pioneer-Gibson Express at San Jose, where the latter companies maintained terminal depots, these witnesses preferring the direct delivery made by applicants. Some of the witnesses favored the applicants because they believed that competition between carriers was essential and desirable to the development of the best service. Many of them testified that they were interested primarily in dependable service and stated that if applicants should transfer any certificate granted in this proceeding they would continue to use the line, notwithstanding this fact, so long as the present high standard of service was maintained; however, a few stated they favored Mr. Holmes because of personal reasons. It might be stated here that Mr. Holmes testified that he had no present intention of transferring any certificate that might be granted.

Some of these witnesses, more particularly those engaged in handling drugs, testified that the lower rates offered by applicants were a material inducement to the utilization of this service.

Applicants submitted a statement containing a list of the names of the shippers, 108 in number, for whom they had been hauling under private contracts or leases, together with the tonnage handled during October, 1925, amounting altogether to 553,053 pounds, or 281½ tons. It was stated that this month was selected as typical and fairly representative of the volume of shipments transported. The total tonnage handled by applicants during 1925 was 5,930,509 pounds, or 2965.25 tons, an average of 8.12 tons per day, including Sundays and holidays.

Considerable testimony was offered relative to the character of applicants' present and past operations, which we shall discuss later.

The granting of this application was protested by Highway Transport Company, Pioneer-Gibson Express, H. O. Crymble, Peninsular Railway Company, Southern Pacific Company and Western Pacific Railroad Company.

Protestant, Highway Transport Company, is now engaged in operating a freight truck service between San Francisco and San Jose and intermediate points, the line having been acquired by the present management about two years ago when it was reorganized and its service improved. From San Francisco to San Jose it operates two schedules, both leaving at night and handling freight accumulated during the preceding day, and another schedule leaving at noon, handling the freight picked up that morning. In addition, local service is maintained to the intermediate points. From San Jose northbound trucks leave in the

early morning, at noon and in the afternoon, serving intermediate points as well. Freight is picked up by a fleet of light trucks maintained for this purpose, is carried to protestant's depot at 559 Sixth Street, San Francisco, and there billed and loaded upon the line trucks, being routed wherever possible in accordance with the destination of shipments so as to facilitate their delivery. The pick-up service is conducted upon a regular schedule, the trucks calling twice daily upon regular customers and answering telephone calls for special service. A depot is maintained at 552 South First Street, San Jose, where some of the freight originating in San Francisco is redistributed to delivery trucks, but the majority is handled in the line trucks, the same having been properly routed when originally loaded in San Francisco. It was stated that, as a rule, deliveries were completed by 11:00 a.m. The available equipment of this protestant consists of 49 trucks and 35 trailers, the investment in which amounts approximately to \$100,000. In addition it conducts a body building plant and machine shop at San Jose, where equipment can be constructed and repaired. Its investment in shop equipment amounts approximately to \$50,000. The average daily tonnage handled by this protestant southbound from San Francisco amounts approximately to from 35 to 47 tons, the northbound tonnage being uncertain in amount, varying considerably from time to time. This protestant's president and general manager testified that the schedules had been established to meet the needs of its shippers, and he had received no complaints from shippers as to the service.

The protestant, Pioneer-Gibson Express, since 1918 has been operating a freight truck service between San Francisco, San Jose and intermediate points, the trucks leaving San Francisco for

San Jose at 12:30 p.m. and during the night, separate schedules leaving in the afternoon and during the night serving intermediate points, while from San Jose north the schedules leave in the morning and during the middle of the day. Protestant maintains a depot on Folsom Street near 5th Street in San Francisco, to which freight is brought by a fleet of pick-up trucks, where it is segregated and loaded upon the line trucks. At San Jose a terminal station is maintained where most of the freight is redistributed to smaller delivery trucks, a few heavy shipments being delivered direct from the road trucks. In addition the delivery trucks handle the local pick-ups in San Jose. Stations are maintained at San Mateo, Redwood and Palo Alto, where agents are located and where pick-up and delivery trucks are maintained for handling local pick-ups and deliveries. This protestant's equipment comprises 23 trucks and 4 trailers, 8 of which are road trucks. In addition, it maintains a shop for repairing equipment. Protestant's total investment in equipment, buildings and tools amounts approximately to \$90,000, and it appears to be financially able to increase its facilities whenever necessary. The tonnage handled southbound amounts approximately to from 35 to 40 tons daily, but the record does not show the average tonnage handled northbound from San Jose other than the general statement that it is a fair amount. As the total capacity of the main line/^{trucks} is approximately 57 tons, protestant has empty truck space available daily of about 17 tons which can be utilized for hauling additional tonnage without any appreciable increase in operating costs. It is doubtful, however, whether the conditions under which the service is maintained will permit each unit to be loaded to its maximum capacity. Protestant's manager testified that there is need for a

morning and afternoon pick-up and delivery service in San Jose and that he has found that delivery of freight upon the day of shipment has been quite advantageous to the shippers. In addition, he stated that experience has shown that local deliveries at San Jose can be handled more promptly with separate pick-up and delivery trucks than by using the main line equipment, most merchants desiring early delivery of their shipments, which can best be accomplished by dividing the freight among several smaller trucks. He also testified that protestant's line could readily handle all of applicant's shipments and, in fact, did so for a short time during January, 1926, when applicants temporarily ceased their operations. He stated that his line had handled drugs in large quantities, but had been unable to keep the business because of the lower rates quoted by applicants, the rates upon this commodity being a material factor in determining its routing.

Protestants called 22 witnesses, most of whom were engaged in wholesale or retail business in San Francisco and San Jose, and some conducted stores at intermediate points. These witnesses for the most part represented substantial firms, some of them being quite large business institutions. With the exception of one witness, who endorsed the applicants' service, all of these witnesses testified that they have used either the Highway or Pioneer lines or both, and have found the service satisfactory, some of them stating that the delivery of freight upon the day of shipment was advantageous, particularly in the case of emergency shipments. All testified that no additional freight transportation service was necessary to meet their respective business requirements. A representative of the Owl

Drug Company stated that his firm used the Pioneer-Gibson Express upon all shipments destined to their branch store at San Jose, but that shipments moving to their agencies at intermediate points were handled by applicants, both services being satisfactory.

Protestant, Southern Pacific Company, maintains a local freight service between San Francisco and San Jose and Los Altos respectively, and also between San Jose and Los Gatos, this service being described in detail. According to a statement introduced in evidence it handled during October, 1925, a total tonnage of 5,541,220 pounds from San Francisco to Coast division points south of San Francisco to and including San Jose and Los Gatos.

No testimony was offered by the other protestants.

Protestants assert that since applicants' past operations have been illegal, they should be denied a certificate. On the one hand, applicants contend they are private carriers, while protestants claim, on the other hand, that applicants are in reality common carriers, operating regularly between fixed termini. Applicants' operations have been conducted, so Mr. Holmes testified, upon advice of counsel that their actions were lawful. Since 1923 applicants and their predecessors have transported freight between San Francisco and points in San Mateo and Santa Clara Counties, a special lease or contract with each shipper regulating the terms of carriage. Applicants have reserved and exercised the right of selection in respect to the shippers served, but, generally speaking, they appear willing to enter into a contract or lease with any firm handling the class of business which they desire to handle. Their rights have been the subject of considerable litigation, the controversy having

been carried to the United States Supreme Court where it is now pending. It is well known that for some years past there has been considerable difference of opinion as to the Commission's power to regulate private carriers, the United States Supreme Court having recently ruled that such power did not exist (Frost & Frost v. Railroad Commission, _____ U.S. _____; 70 Law Ed. 682).

In determining the public convenience and necessity for the proposed service we must consider the requirements of the shippers and the ability of the existing carriers to meet those needs. The applicants called many substantial shippers, all of whom were satisfied with their service, and many of whom stated it was superior to that of the existing lines. Although some were induced to patronize the applicants because of lower rates, most of them have used the line because of the excellent service, and in addition the record discloses that upon many commodities applicants' rates were about the same as or higher than those of protestants. Many of these witnesses stated that they were interested primarily in the transportation service itself rather than in the applicants personally, and would continue to use the line should equal or better service be given by a future owner. Were this merely a matter of rate competition, we would be disposed to give scant consideration to the present application for, all other things being equal, lower rates in and of themselves are not sufficient to warrant the establishment of a competitive service, the proper remedy being the filing of a complaint against the rates of existing lines rather than the introduction of another truck service. But applicants have shown that the service of the existing carriers does not fully meet the needs of the shippers. While it is true that these

existing carriers have been handling a substantial tonnage and appear to have adequate equipment and facilities, it nevertheless has been shown that a substantial number of responsible shippers, many of them quite large business institutions, have found the service inadequate for their own purposes and have ceased using it. This, in itself, is an indication of public necessity for an additional service.

The territory proposed to be served is of high traffic density and should be afforded every facility for dependable public transportation in order to insure its development. We believe that the applicants have shown sufficient justification for their proposed service, consequently the application will be granted.

Upon full consideration of the evidence, we are of the opinion and hereby find as a fact, that public convenience and necessity require the operation by H. E. Holmes and E. P. Holmes, as co-partners doing business under the firm name and style of Holmes Express, of an automotive truck service for the transportation of freight as common carriers between San Francisco, Robertsville, San Jose, Los Gatos and the intermediate points of South San Francisco, Daly City, Colma, Holy Cross, Baden, San Bruno, Lomita Park, Millbrae, Broadway, Burlingame, San Mateo, Beresford, Belmont, Bel Monte County Club, San Carlos, Redwood City, Atherton, Menlo Park, Stanford University, Palo Alto, Los Altos, Mayfield, Mountain View, Sunnyvale, Cupertino, Santa Clara, Meridian and Saratoga.

An order will be entered accordingly.

O R D E R

A public hearing having been held in the above-entitled application, the matter having been duly submitted, the Commission being now fully advised, and basing its order on the finding of fact appearing in the opinion which precedes this order,--

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
HEREBY DECLARES that public convenience and necessity require the operation by H. E. HOLMES and H. P. HOLMES, as co-partners doing business under the firm name and style of HOLMES EXPRESS, of an automotive truck service for the transportation of freight as common carriers between San Francisco, Robertsville, San Jose, Los Gatos, and intermediate points of South San Francisco, Daly City, Colma, Holy Cross, Baden, San Bruno, Lomita Park, Millbrae, Broadway, Burlingame, San Mateo, Beresford, Belmont, Bel Monte County Club, San Carlos, Redwood City, Atherton, Menlo Park, Stanford University, Palo Alto, Los Altos, Mayfield, Mountain View, Sunnyvale, Cupertino, Santa Clara, Meridian and Saratoga; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be, and the same is hereby granted to said H. E. HOLMES and H. P. HOLMES, as co-partners as aforesaid, for the operation of the service herein authorized, subject to the conditions hereinafter set forth.

1. Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.
2. Applicants shall file, in duplicate, within a period of not to exceed twenty (20) days from the date hereof, tariff of rates and time schedules, such tariffs 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.

3. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.
4. No vehicle may be operated by applicants herein unless such vehicle is owned by said applicants or is leased by them 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 the date hereof.

Dated at San Francisco, California, this 10th day of January ~~December~~, 1929.

H. B. Bridges

C. Deane

Leon W. Hill

Thos. S. Powell

Commissioners.