

ORIGINAL

Decision No. 18011

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application)
of HIGHWAY TRANSPORT COMPANY for)
extension of its operative rights)
to permit the hauling of fresh)
fruits and vegetables, poultry and)
eggs, northbound from Aptos, to)
Betabel to Santa Cruz, inclusive,)
from territory authorized to be)
served by Decision No. 17469 in)
application No. 12134, and for more)
complete description of points)
authorized to be served.)

APPLICATION NO. 13404.

Gwyn H. Baker, for Applicant.

Wyckoff & Gardner by H. C. Wyckoff,
and Devlin & Brookman by D. Brookman,
for Clark Bros. and L. A. Thornewill,
Protestants.

BY THE COMMISSION:

O P I N I O N

In this proceeding applicant Highway Transport Com-
pany asks a definition of its routing between Santa Cruz and
Watsonville and also seeks to be relieved of a restriction im-
posed upon its operation by Decision No. 17469 on Application
No. 12134, whereby it was prohibited from transporting "ber-
ries, vegetables, green fruits, poultry and eggs northbound
from points between Santa Cruz and Betabel."

Public hearings herein were conducted by Examiner .
Williams at Watsonville.

As to the request of applicant for a more specific

description of the points now authorized to be served, no opposition was made by either protestant and the order herein will clarify that portion of applicant's operation between Santa Cruz and Watsonville.

The restriction which applicant seeks to have removed was agreed to by applicant and protestants Thornewill and Clark Bros. during the hearing on Application No. 12134, and the order in Decision No. 17469 on that application merely inserted the language of the stipulation as agreed to by applicant and protestants. Upon the basis of this stipulation protestants Clark Bros. and Thornewill withdrew all opposition to the service proposed by applicant at that time and since authorized by this Commission.

Applicant now seeks amendment of the certificate granted as indicated above, to permit the transportation of the commodities which, under its stipulation, it was agreed would not be transported, and which stipulation was the basis for the withdrawal of opposition at former hearings. To justify the relief prayed for by applicant in the instant proceeding, it is necessary that it be affirmatively shown at this time that public necessity requires the elimination of the restriction in question.

In support of the application, Frank J. Hennessey, vice-president and general manager of applicant corporation, testified that applicant has a contract with the California Packing Company, under the terms of which applicant performs trucking service for the packing company in Santa Clara County and other counties, particularly during the fruit season; that in the fulfillment of this private contract, the appli-

cant has been called upon to move apples and other fruits and vegetables from the Watsonville district to San Jose; that a similar contract operation is performed for Blase Bros., wholesale fruit and vegetable dealers of San Jose. The performance of this contract is conducted by M. E. Revallier, an employee of applicant. Mr. Hennessey testified that for several years he had contracted with the California Packing Company to supply it with trucks, which were sent, on order of the packing company, to points where the company purchased fruits or vegetables; that these contracts expire on the last day of February in each year, and that the parties are now in process of making new contracts for 1927. The witness admitted that the rates proposed in the instant application are not the same as those fixed between applicant and the California Packing Company, in some instances being lower, and in some instances higher, than those in the contract. The movements for Blase Bros. are conducted with a vehicle owned by applicant and rented to Revallier, who makes the movements for Blase Bros.

Applicant produced as a witness in its behalf, John C. Hayes, buyer for Blase Bros., who testified that frequently apples, artichokes and potatoes are purchased in quantities in Watsonville and in the Pajaro Valley, and that the service of applicant is necessary in moving these commodities to San Jose.

L. M. Boruck, assistant manager at San Jose of the California Packing Company, testified that for the past seven years applicant had furnished vehicles during the canning season for the movement of harvested crops from various points,

and that the service had been abundantly satisfactory; that among these commodities were tomatoes, apples, pears, beans and apricots shipped from the Pajaro Valley and the neighborhood of Santa Cruz; that as many as 250 tons of apricots had been moved in season from Watsonville alone, and that the movement from all points was such that at times applicant furnished from 25 to 35 trucks for the service of this company under the annual contract.

Sheldon Peckham testified that there are approximately 28,000 acres under cultivation in the Pajaro Valley, producing mainly apples but also large quantities of lettuce, beans, artichokes, garlic and strawberries; that there are 72 packing houses, of which 70 are equipped for apple-packing; that there are approximately 3,000,000 field boxes of apples packed annually; that the population of Watsonville is about 8,000 and that approximately 15,000 persons do their trading there. This testimony was introduced to show the large volume of production in the Pajaro Valley region.

Henry Struve of Watsonville, fruit grower, packer and shipper, testified that he now makes shipments of cauliflower, lettuce and peas from the two ranches operated by him, to San Francisco and Los Angeles, and that he expects to make shipments to San Jose. He testified that he now uses his own trucks, but that he had also used Clark Bros. service and found it entirely satisfactory. Witness expressed the belief, however, that if a competitor were admitted to the field, it might have the effect of improving service and perhaps reducing rates.

Kenneth Martin, another packer and shipper of Watsonville, testified that he had used the service of protestant Clark Bros., but that another carrier was needed as a standby in case the Clark service proved inadequate or broke down. He admitted, however, that in over four years' operation, this had never occurred.

M. N. Lettunich of Watsonville, packer and shipper handling approximately 125,000 field boxes a season, testified that he ships from 50 to 200 boxes at a time to San Francisco and had found the service of Clark Bros. adequate and efficient. Witness further testified that he did not consider rates in this connection, but expressed the belief that competition might have the effect of reducing rates. Similar testimony was given by Jasper Simunovich and John Franisch.

A. B. Clark, testifying on behalf of protestant Clark Bros., stated that this carrier now has 11 trucks and 6 trailers in service and is financially able to acquire, either by purchase or lease, any additional equipment which may be necessary to meet unusual peak conditions in shipping. He further testified that by this carrier's local freight tariff No. 3, effective January 14, 1927, rates on vegetables and fruits, including cold storage apples, had been reduced, the reduction on apples constituting the principal reduction, being from 15 cents to 12½ cents per box. Witness testified that this reduction had been made possible by reason of the additional revenues received from the transportation of general freight as a back haul from San Francisco and San Jose. In this connection, the Railroad Commission in its Decision No. 17453, dated October 13, 1926, on Clark Bros.' Application No. 12636, imposed a require-

ment that this carrier submit monthly reports to the Commission, showing a segregation of the income from northbound fruit and vegetable transportation and from general freight transportation, in order that the Commission might ascertain at the end of six months whether the rates on fruit and vegetable shipments should not be reduced as a result of the added income. It appears that Clark Bros. have satisfied themselves, without intervention on the part of this Commission, that reductions in rates were justifiable and accordingly have made them, although it was explained by Mr. Clark that these reductions were made largely in an effort to prevent so-called "wildcat" competition. Mr. Clark further testified that the new rates would prove compensatory to the carrier, and denied that they had been adopted to meet the proposed rates of the applicant herein. The witness also testified that the service maintained by Clark Bros. is used by all the packers in the Pajaro Valley, and, in addition, by about 400 producers, and that he had received no complaint as to rates, except that of Mr. Struve.

Protestants Clark Bros. and L. C. Thornewill produced as witnesses in support of their protest, Julius Dablke, manager of the L. J. Hopkins Produce Company of San Francisco; M. J. McGowan, president of the Pajaro Valley Vegetable Growers' Association; George Lyman of the Watsonville Ice & Cold Storage Company, who ships 100,000 boxes of apples a season, half of which are handled by Clark Bros; A. G. Earle, C. J. Rogers, Chas. M. Herbert, E. H. Haack, O. O. Eaton, Walter Fredericks, P. C. Paulsen, J. F. Dalton, L. L. Marsh, Henry Miller, A. L. Mathiesen, M. A. Travers, Harry E. Cornell, H. B. Brewington, Frank Oliver, J. H. Struve, Chas. Cleveland,

C. P. Rood, G. E. Flath and N. H. Neilson, all producers, shippers or packing house owners in Watsonville and the Pajaro Valley, with one or two exceptions.

Mr. McGowan testified that the service of protestant Clark Bros. during the past four years had been entirely satisfactory to the association of which he is president; that their prompt delivery of shipments at the market in San Francisco stabilizes prices and returns to the growers, and that a competitive service might seriously impair this carrier's ability to continue as in the past.

Mr. Haack, manager of the Central California Berry Growers' Association, testified that the service provided by Clark Bros. was so satisfactory that no complaint of damage or delay had ever been brought to the association by any of its members, such claims being settled usually the following day without intervention of the association.

C. J. Rogers, owner of a 200-acre orchard producing approximately 100,000 loose boxes of apples a season, testified that he did not wish to see Clark Bros. service impaired, as it had been so efficient and dependable that it constituted a sort of insurance to the growers and shippers that they would receive the full benefit of the best market conditions, because of prompt delivery without injury to the shipments.

As a whole, these witnesses were quite emphatic in their statements that the service maintained by Clark Bros. was a part of the general system of production in the Pajaro Valley, and that anything that might impair it would be extremely undesirable.

L. A. Thornewill, operating a service between Santa Cruz, Capitola and San Francisco and one or two intermediate points, for the transportation of green fruits, vegetables and eggs, testified that he maintains daily service on schedule for these commodities, and that a division of the business he now enjoys would prevent his giving a daily service. This witness testified that he already suffers competition from two contract carriers and that he had never received a call to transport any green fruits, vegetables or berries from the Santa Cruz district to San Jose. In this connection, the record is silent as to any shippers in the Santa Cruz region who require additional service.

After full consideration of the entire record herein, we cannot find that applicant has affirmatively shown public necessity justifying removal of the restriction imposed by Decision No. 17469 on Application No. 12134. The testimony of all witnesses, including those of applicant, who had used the Clark Bros. service, is, in effect, that this service is adequate and efficient. The only reason advanced for the establishment of the service proposed by applicant herein is that competitive service might result in a reduction of rates. We do not believe there is anything in the record justifying removal of the restriction for the purpose of effecting a reduction in rates, especially in view of the fact that protestant Clark Bros. have already reduced their rates approximately 15 per cent. The only important testimony in behalf of applicant is that of Mr. Hennessey concerning the contract of the California Packing Company, but a consideration of this testimony indicates that it almost wholly concerns transporta-

tion between plants of this company within the city of San Jose, and that such movements as have been made by applicant have been made by virtue of private arrangements with the packing company which have continued from year to year since 1920. We are, however, constrained to believe that the stipulation entered into between applicant herein and protestants Clark Bros. and Thornewill in former proceedings meant that applicant would not engage in the business of transporting the commodities named from either the Santa Cruz region or the Pajaro Valley or Watsonville. As the contract urged in the present proceeding expires in February, 1927, we see no reason to give it further consideration.

For the foregoing reasons we find as a fact that public convenience and necessity do not require the establishment of service as proposed by applicant herein or removal of the restriction imposed by Decision No. 17469 on Application No. 12134. There appears to be no reason, however, why applicant's routing between Santa Cruz and Watsonville should not be corrected so as to permit service to the intermediate points of Seabright, Capitola, Seacliff and Del Mar. An order accordingly will be entered.

O R D E R

Highway Transport Company having made application to the Railroad Commission for an order declaring that public convenience and necessity require the extension of its operative rights to permit the hauling of fresh fruits and vege-

tables and poultry and eggs, northbound from Aptos, to Beta-
bel to Santa Cruz, inclusive, from territory authorized to
be served by Decision No. 17469 on Application No. 12134, and
for a more specific description of the points authorized to
be served, public hearings having been held, the matter hav-
ing been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
HEREBY DECLARES that public convenience and necessity do not
require amendment or modification of the order heretofore
made in Decision No. 17469 on Application No. 12134, except
as hereinafter provided; and

IT IS HEREBY ORDERED that the order heretofore
made in Decision No. 17469 on Application No. 12134 be and
the same hereby is modified to permit the use by applicant
Highway Transport Company of the main highway between Santa
Cruz and Watsonville, with right of diversion therefrom
over county roads to serve the communities of Seabright, Cap-
itola, Seacliff and Del Mar.

IT IS HEREBY FURTHER ORDERED that in all other re-
spects the application herein be and the same hereby is
denied.

The effective date of this order shall be twenty
(20) days from and after the date hereof.

Dated at San Francisco, California, this 23
day of February 1927.

Ernesto

H. B. Brundage

Chas. E. Smith

Leon A. Hill

Thos. J. Harris

COMMISSIONERS.