

Decision No. 18474

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of  
EDWARD B. COLLINGE  
for certificate of public convenience  
and necessity to operate an "on  
demand" motor freight service, restrict-  
ed to certain commodities, within  
California, Paso Robles, Fresno and  
South.

Application No. 12615.

Warren E. Libby, and Harry N. Blair, for the  
Applicant;  
Herbert W. Kidd, for Motor Transit Co.;  
L. T. Fletcher, for Motor Service Express;  
L. C. Zimmerman, for Southern Pacific Co.;  
Philip Jacobson, for Los Angeles and West Side  
Transportation Co., Los Angeles and Bakersfield  
Fast Freight, Los Angeles and Santa Barbara  
Motor Express, Coast Truck Line, Rex Transfer,  
Keystone Express, City Transfer & Storage Co.  
of Long Beach, W. & S. Truck Line, and Los  
Angeles & San Pedro Transportation Co.

BY THE COMMISSION:

O P I N I O N.

Applicant herein, operating under the fictitious name of Progressive Transportation Company, seeks a certificate of public convenience and necessity authorizing the operation of an "on demand" motor freight service for the transportation of certain "heavy" commodities between Los Angeles and points on and adjacent to seventy different routes, each with fixed termini, and 25 miles from each route in either direction.

Public hearings herein were conducted by Examiner Austin at Los Angeles.

Applicant defines the commodities he proposes to transport as follows:

Structural steel; well-boring outfits; well-drilling outfits; electric plants used in the generation of power and in the pumping of water; tools; motors; engines; steam or gasoline; machinery; materials and supplies, including boilers, tanks, brick, lumber, cement, clay, and commodities necessary in the development of oil and water properties and in the generation of power, the maintenance and the operations thereof, including materials and supplies necessary in the pumping, storage, regulation, control, and transportation of oil, water and power.

Transportation of the commodities above is to be undertaken only "on call" and in quantities of 3 tons, or more. A schedule of routes and a table of distance rates computed upon tonnage applied to various distances up to and including 600 miles is attached to the application. The rates proposed are for movements over paved roads only and where any part of the movement, or all of it, is over an unpaved road, applicant proposes to charge a rate of 65 cents per ton per hour.

Applicant produced, besides his own testimony, the testimony of seven witnesses for whom he has provided transportation for many of the commodities included in the application, for several years past. The principal shipper as to volume and weight is the Llewellyn Iron Works, Los Angeles, which receives a large quantity of raw material and ships structural steel between Los Angeles and Los Angeles Harbor. The testimony of Mr. Loretz, traffic manager of the works, discloses that this movement has been conducted under private arrangements between applicant and the Llewellyn company, and that these private arrangements have existed for several years. Another witness was F. A. Foersterling, assistant traffic manager for Associated Oil Company, at Los Angeles, who testified that this company uses many carriers for the transportation and distribution of

oil-well casing and machinery and tools, etc., and that applicant herein had for several years performed such service to points mostly in the oil fields of the San Joaquin Valley. Another witness was F. J. Quackenbush, a well driller, whose rigs and materials have been transported by applicant from point to point in Southern California.

Other witnesses representing the same types of business testified to similar facts. From their testimony, it is plain that the practice of the shippers, where they have a large volume to be moved to a definite point, is to receive bids from several private trucking companies and select the carrier from among the bidders. In each instance the movement is a one-way movement and begins and ends with the particular contract. The testimony of these witnesses as a whole does not establish any fixity of routes or termini. An exception to this is the movement between Los Angeles and Los Angeles Harbor, which represents about 50 percent of the business of applicant.

Applicant has been hauling between Los Angeles Harbor and Los Angeles at a rate of \$1.50 a ton. The rate proposed in his application is \$2.70 a ton and higher. Many of the witnesses testified they would not use applicant's services at the rates proposed. There is no showing that the thirty public carriers now operating under valid authority between Los Angeles and Los Angeles Harbor are not providing adequate facilities for all movements.

Analysis of the whole record presented by applicant as an affirmative showing does not disclose operations by him that are continuous, or even frequent, between the same termini, or over the same routes. Rather, his business is shown to be a

delivery business wherever the commodities which he is specially equipped to carry are in demand, usually following structural contracts, or subterranean exploration, previously contracted for by the consignors, and obtained by competitive bidding on particular movements.

In view of this showing on the part of applicant, protestants question the jurisdiction of the Commission to grant the certificate applied for, contending that the operation presented by applicant cannot be distinguished from the operation of Ben Moore as defined in Decision No. 15818, on Application No. 11303, (27 C.R.C. 388), and that it is beyond the jurisdiction of this Commission under the decision of the United States Supreme Court in *Frost & Frost vs. Railroad Commission*, 271 U.S. 583; 70 Law Ed. 682.

The application itself is predicated upon the decision of the Supreme Court of the State of California in the case of *Frost & Frost vs. Railroad Commission*, (197 Cal. 230; 70 Cal. Dec. 457) wherein it was held that the regulation of the business of a private carrier engaged in the business of transporting property for hire upon the public highways between fixed termini or over a regular route is cognate and germane to the regulation of business of a common carrier in like transportation. (This decision, however, was reversed by the United States Supreme Court in the decision cited above.) The application also describes applicant as conducting "for a number of years" an "anywhere for hire motor freight handling business on demand".

In our judgment the contention of protestants under the record herein must be sustained. The applicant has not operated in the past, nor does he intend to in the future, as a common carrier over any regular route, or between any fixed termini; what he does is to provide equipment, most of it specially

designed for the transportation of articles of great weight, to transport property under particular private contract to any point in California. There is no proof that his service for any purpose regularly between fixed termini over regular route, as a common carrier, is needed. The fact that he now hauls commodities between Los Angeles and Los Angeles Harbor under private contract, in large quantities, is not a basis justifying the certificating of this operation.

Applicant has sought, by a plan of operation covering practically every available highway of California south of Fresno and San Luis Obispo, to provide operations over regular routes and between fixed termini. Where he has failed is in affirmatively proving that public necessity requires his service over any particular route; that he would use all, or most of the routes proposed, is highly conjectural; that he would use a small minority of them frequently, appears probable, but that he would use any one route on the demand of consignors continuously, (except as before noted between Los Angeles and Los Angeles Harbor) is extremely improbable. The testimony submitted by applicant discloses the operation of a radial contract carrier and does not support the authority of the Commission to transform his operations into those of a common carrier as defined in Section 5 of the Auto Transportation Act (Chapter 213, Acts of 1917 as amended). For this reason the application should be dismissed for lack of jurisdiction.

ORDER.

Edward B. Collinge having made application to the Railroad Commission for a certificate of public convenience and

necessity to operate auto truck freight service between Los Angeles and various points, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

IT IS HEREBY ORDERED that the application herein be and the same hereby is dismissed for lack of jurisdiction.

Dated at San Francisco, California, this 9<sup>th</sup> day of June, 1927.

Simon Gold

J. G. B. B. B.

C. S. S.

Leon C. C.

Thos. S. S.

Commissioners.