

Decision No. 13309

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
(1) of MERL J. NUGENT, doing  
business under the name and style  
of NUGIE'S SUDDEN SERVICE, for  
certificate of public convenience  
and necessity to operate (2) an  
automobile truck line service as  
a common carrier, between Los  
Angeles and certain points, lakes,  
resorts, stores and dwellings in  
Mono County, California.

**ORIGINAL**  
APPLICATION NO. 13906

Newby & Newby, for Applicant.

T. A. Woods, for American Railway  
Express, Protestant.

Joseph Hellen and A. C. Hugg, for  
Southern Pacific Co., Protestant.

Earl A. Bagby, for Owens Valley  
Transportation Co. and California  
Transit Co., Protestants.

Richard T. Eddy and Earl A. Bagby, for  
Alexander & Larson, Protestants.

BY THE COMMISSION:

O P I N I O N

Merl J. Nugent, doing business under the name and style of Nugie's Sudden Service, has made application to the Railroad Commission for a certificate of public service and necessity to operate an automobile freight truck line as a common carrier between Los Angeles and certain points in Mono County. The application originally was

made by the present applicant and Henry S. Sweet, copartners, and included passenger operation, but before the hearings were completed, this copartnership was dissolved, applicant Nugent succeeding to all the business, and Mr. Sweet withdrawing, as shown by the Second Amended Application, limited to freight service.

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

Applicant proposes a service four times weekly between May 1 and September 30 of each year, for the transportation of freight from Los Angeles to points in Mono County, and for a similar service between April 15 and May 1 and October 1 and November 1 of each year, weekly. Applicant proposes to serve points and resorts between Clark's Rock Creek Camp and Bridgeport, county seat of Mono County, with diversions from the main highway to various resorts and communities. No service is proposed between November 1 and April 15 in any year, because of the impassability of the highways in Mono County. Applicant proposes to use five-ton, single trucks, and his time schedule calls for a departure from Los Angeles every day at 6:00 P.M. on Tuesday, Wednesday, Friday and Saturday of each week. Trucks returning from Bridgeport are expected to make the distance, approximately 375 miles, on an eighteen-hour schedule. A schedule of rates is attached to the application, and is expressed in rates per pound and per ton, and is made Applicant's Exhibit "A" attached to the application. Applicant also proposes a table of rates for transportation from point to point within Mono County.

Applicant testified that he has conducted service to Mono County about once a week during the summer season

of 1927; that he had found cargoes available in excess of the capacity of a six-cylinder two-ton truck which he used. It is his testimony that he had been able to estimate a volume approximately four tons for each of the four trips he proposes to make weekly from Los Angeles to Mono County points. He expected to develop a back-haul, but had not anything very clearly in mind. He testified he had hauled on return trips marble and ore from the Travertine mines, but admitted that such hauls could not be conducted without a very low commodity rate. The commodities he had hauled from Los Angeles were furniture, building material and provisions.

Applicant gave a detailed estimate of the cost of the operation he proposes, and this operation called for a weekly expenditure of \$754, not including depreciation. The estimate provided for the services of three drivers, 3200 miles weekly travel at 15¢ a mile truck expense, overhead and other details including taxes and insurance. The estimated cost of 15¢ per mile, applicant said, was based on his experience in operating trucks over the route, and he seemed positive that the vehicles of the five-ton type could be operated with pneumatic tires over the unimproved highways north of Mojave, at the cost per mile stated.

Applicant estimated that a four-ton load would be carried on each of the four trips weekly, and that at the maximum rate, each truck would earn \$360.00, or \$1,440 for the week. At the minimum rate of \$45.50 a ton, the earning would be \$728.00. Applicant, however, admitted that an average of three tons per trip was more likely, and he figured a base rate of 3 $\frac{1}{2}$ ¢ per pound on all classes,

as the income per trip north. No estimate was made as to the income from trips in the reverse direction.

Applicant did not present himself as financially able to conduct this service without assistance, and Dr. J. H. Miller, a retired physician and rancher, of Los Angeles, was produced as a witness. Dr. Miller testified that he believed applicant could establish and make profitable the service he proposed, and that witness would advance from \$10,000 to \$15,000 to applicant to establish the operation. Dr. Miller said he knew nothing about the trucking business, but had a great deal of confidence in applicant.

Applicant was supported, first, by a petition signed by eight persons owning or interested in resorts in Mono County, but this petition was signed by each when applicant proposed, with his former partner, Sweet, both a passenger and freight service. Of the signers of this petition, none was present as a witness at the hearings. The witnesses who supported applicant were F. W. Ahrens, operating Ahrens Summit Camp at Virginia Lakes, a point 8300 feet above sea level, and 378 miles from Los Angeles; Lloyd B. Austin, operating Tamarack Lodge at Mammoth Lakes. William A. Foster, of Los Angeles, also interested in a resort at Virginia Lakes, was a witness. These witnesses testified that they would use the service as proposed herein, but did not indicate any volume or continuity of shipments.

Mr. Ahrens testified that he can buy provisions and other supplies at Los Angeles and have them delivered cheaper than he can purchase them in Reno and have the same delivered, although the distance between his place and Reno is only 130 miles. He testified he could well afford to pay a cent a

pound more than rail rates, in order to get the service proposed by applicant, with a maximum of 5¢ per 100 pounds. Mr. Ahrens testified that his average shipment would not be over 100 pounds. He further testified that such shipments as he had received via rail and truck to Mono Inn where he had picked them up and transported them to his own place, had taken on an average two weeks' time.

Mr. Austin testified that he had used applicant to transfer freight under private contract, because he regarded the present system of rail and truck with numerous transfers and delays, unsatisfactory and uneconomical. He was of the opinion that a regular, dependable service would be of great benefit and would be patronized by resort owners. The witness has been using, to some extent, American Railway Express service to Bishop, sending his own truck to Bishop twice a week to pick up consignments. He regarded this method as quite expensive and unnecessary, if a public carrier would undertake the service.

Mr. Foster further testified he would use the service if it were established, but did not know the extent to which he would use it. The witness had been purchasing furniture and supplies from Stockton, having them delivered via Reno, Minden and Bridgeport. This, he regarded as very unsatisfactory.

All the witnesses agreed that it was more important to have a trucking service established than a passenger service, as the things required by resort keepers were transported with delay and difficulty, while ninety per cent of the patrons and visitors at the resorts came in their own vehicles.

The application was protested by the carriers between Los Angeles and Mono County points, none of which provides a through service. Protestant Southern Pacific Co. has daily passenger trains from Los Angeles to Bishop (Laws), all of which carry American Railway Express. Daily freight trains are also operated, except on Sundays, and shipments intended for Mono County points as a destination are delivered at Laws where they are taken by the trucking service of the Smith Auto Co. at Laws and transported to points in Mono County as far as June Lake. Shipments intended for points north of June Lake are not handled by this routing.

Protestant California Transit Co. is an applicant for a through passenger and express business between Los Angeles and Bishop, accepting express on all classes including fresh provisions up to 100 pounds.

Alexander and Larson, operating the Mono County stage line, operate freight transportation between Bishop and points in Mono County up to and including Tioga Lodge and Mono Inn.

All of these protestants assert their ability to care for the traffic adequately at rates that are reasonable, and each asserts that the through services proposed could not be profitably operated, because of a lack of volume, and would only, if established, fail and do almost irreparable injury to the existing carriers. Each of the protestants submitted a comparison of its rates and services with that proposed by applicant. None of the services north of Bishop operate in the winter season.

In considering this application, it must be kept in mind that the destination of the shipments from Los Angeles is in a region not now developed industrially or agriculturally, and is sought only by tourists and vacationists in the summer season. Applicant Nugent in his testimony identified sixteen resorts which he proposes to serve, not including points between Mono Lake and Bridgeport, and all of which are accessible only by ordinary mountain roads, some very steep grades and under considerable difficulty even in advantageous weather. The problem of freight transportation is more serious in this region and more difficult than that of passenger transportation, because of the weights which applicant expects to carry over the various roads. Outside of the testimony of the three witnesses produced, there is nothing in the record to show either a sufficient demand for the service, or a sufficient volume of tonnage to convince the Commission that the establishment of the service would be a prudent undertaking in behalf of the public. We doubt very much the applicant's estimate of the cost of operation, particularly that portion of the cost relating to the mileage, it being contrary to the showings before this Commission in scores of other proceedings that such an operation could be conducted on a basis of 15¢ per truck mile. We are also not convinced by applicant's showing that his estimate of volume available throughout the whole season for each trip is at all dependable. Applicant himself had only made a few trips under contract to this region, and seems to base his expectancy of business on his ability to find the cargoes after operation is established. But assuming an average rate based upon three tons average at 3¢ a pound, applicant would earn at most but \$840 per week, without providing for depreciation or any return upon

his investment, or for contingencies of traffic that he has not included in his estimate of \$754 per week. In addition, the applicant himself is not apparently in financial condition to prosecute the business, and expects to do so by borrowed capital. This, we believe, is not a satisfactory basis of establishment. In addition to that, there is no affirmative proof that the present methods as established by protestants herein, are inadequate. The time in transportation, as shown by protestants, is not the extreme of weeks on the average mentioned by applicant's witnesses, and seems to be adequate considering the limited season and difficult operation necessary to reach the destination.

We, therefore, find upon the record herein, that the service proposed by applicant is not a public necessity, and we further find that even if there was an affirmative showing of necessity, this applicant has not proposed a service that is prudent, or that, in our judgment, could be maintained without serious loss both to applicant and other established services. For this reason, we believe the application should be denied.

#### O R D E R

Merl J. Nugent, doing business under the name and style of Nugie's Sudden Service, having made application to the Railroad Commission for a certificate of public convenience and necessity to operate an automobile freight truck line as a common carrier between Los Angeles and certain points in



Mono County, 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 do not require the establishment of the service proposed by applicant herein; and

IT IS HEREBY ORDERED that the application be, and the same is hereby, denied.

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 12 day of February, 1928.

Leon A. White  
W. A. ...  
Emm ...  
Thos. J. ...  
M. J. ...  
Commissioners