

Decision No. 19638

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of))
 L. A. THORNEWILL for a certificate))
 of public convenience and necessity))
 to extend operations to points be-))
 yond Santa Cruz to and including))
 Swanton.))

ORIGINAL

Application No. 14428.

Devlin & Brookman, by Douglas Brookman,
 for Applicant.

Harry A. Encell and M. A. Sanborn, by
 M. A. Sanborn, for Coastside Transportation
 Company, Protestant.

BY THE COMMISSION:

O P I N I O N

The applicant holds an operative right for the transportation of farm products from Capitola and Santa Cruz to San Francisco over the State highway by way of Alma and Saratoga. He seeks to extend his right about 15 miles beyond Santa Cruz along the coast highway to Davenport and Swanton. The Southern Pacific Railway's branch line extending northwestward from Santa Cruz terminates at Davenport, which is about 12 miles from Santa Cruz. The paved highway also terminates at Davenport, Swanton being a small settlement about three miles beyond Davenport on an unpaved highway. The latter road follows the ocean shore northward through Pescadero and Halfmoon Bay to San Francisco. The Coastside Transportation Company holds an

operative right between Santa Cruz and San Francisco over such coast road and protests the proposed operation of Thornewill over any portion thereof. A public hearing was held before Examiner Rowell in Santa Cruz on March 21, 1928.

The Davenport-Swanton district produces a large quantity of vegetables, particularly artichokes, Brussels sprouts and peas. For the Los Angeles and eastern markets the producers use the rail service from Davenport, but it appears that when such products are consigned to the San Francisco market, transportation by motor truck is preferred. The applicant has served the growers in the Davenport-Swanton district for several years without having secured a certificate for such operations from the Railroad Commission. His explanation for not having heretofore applied for a certificate is that his operations until recently have been irregular, and to those growers only who have called upon him for such service. Though the protestant did not emphasize the point that applicant has heretofore been willfully operating over said route without a certificate, the Commission is convinced that the applicant, if not willfully operating in violation of law, has been negligent in failing earlier to apply for a certificate covering such operations.

Applicant is now serving eight or ten of the largest growers in the Davenport district, hauling for them one to four tons of produce daily. There is no question that he is rendering a satisfactory service. Eight witnesses testified that they are shipping to San Francisco by the applicant's line, that his service is satisfactory, and that their needs require that it be continued. The Coastside Transportation Company introduced evidence to show that it has equipment sufficient to care for all the business originating in the Davenport area and that it is otherwise prepared to give adequate service. It has recently filed new tariffs which provide for a rate of 75 cents per 180 pounds crate, the rate

formerly being \$1.13 per crate. Thornewill's rate has at all times been \$1.00 per crate. The distance from Davenport to San Francisco over the Coastside route is about 84 miles and practically the same as that traversed by Thornewill by way of Santa Cruz and Alma.

The applicant stresses the importance of transporting such perishable commodities over well paved highways and introduced evidence tending to show that vegetables hauled by truck over the unpaved coast road did not arrive in San Francisco in good condition. The applicant's route is no doubt preferable, but the coast road is now being improved and should permit the Coastside Company to render shippers entirely satisfactory service. Since the running time over either route is not over five hours both carriers are able to collect vegetables picked during the day in the Davenport-Swanton district and deliver them in San Francisco in time for the early morning market.

In spite of the general equality in operative conditions between the two carriers, the Coastside Company has never enjoyed more than a negligible part of the business originating in this district. There can be but one explanation for this and that is the inequality in rates. The evidence shows that since its reduced rate became effective on March 17, 1928, the Coastside Company has obtained the business of two growers who previously used applicant's line. The Coastside Company secured its certificate to operate a through service on February 24, 1927, and since it thereafter for nearly a year neglected to withdraw an apparently unreasonable rate, it cannot now demand that it be protected from competition.

We are of the opinion that the shippers in the neighborhood of Davenport and Swanton need the transportation service of the applicant, as well as that of the existing carrier, and that they will be benefited by the competition resulting. It is admitted

that both carriers have been successful in their respective fields. The financial position of the protestant carrier cannot be endangered because of such competition for it has never enjoyed the business in dispute. It is true that the applicant has in some degree been guilty of violation of law in continuing to operate in such territory without a permit, but we are of the opinion that under the circumstances he should not be denied the right to prove the public need for the continuance of his operations.

It should be stated that applicant's rate of \$1.00 per crate on vegetables has at all times appeared in his tariffs as the transportation charge on such commodities from Santa Cruz to San Francisco and was fixed in his tariffs with the business originating from the whole Santa Cruz area, including Davenport and Swanton, in mind. As there are no commodities of this class produced in the Santa Cruz or Capitola area proper, no discrimination results. The proposed rates on all commodities are as set forth in Exhibit "A" attached to the application.

O R D E R

L. A. Thornewill having filed the above entitled application to extend his present operative right for the transportation of freight between San Francisco and Santa Cruz to include Davenport and Swanton, a public hearing thereon having been held, the matter having been duly submitted and being now ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by L. A. Thornewill of an automotive truck service for the transportation of berries, fruits, vegetables, poultry and eggs from Swanton to San Francisco by way of Davenport and Santa Cruz,

and to serve points intermediate between Swanton and Santa Cruz, with the right to return empty containers without charge from San Francisco to Swanton and intermediate points, the same to be operated as an extension of the operative right for the transportation of such commodities from Capitola and Santa Cruz to San Francisco granted by Decision No. 17451, and not as a separate right.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to L. A. Thornewill for such operations as a common carrier, subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.
2. Applicant 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 applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

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

Dated at San Francisco, California, this 20th day of

April, 1928.

Leon White

Clarence

M. J. Carr