

Decision No. 19685

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
MOTOR SERVICE EXPRESS, a corporation, )  
for a Certificate of Public Conven- )  
ience and Necessity authorizing the )  
extension of its service to inter- )  
mediate points between Los Angeles, )  
and Santa Monica, Ocean Park and )  
Venice. )

APPLICATION NO. 14253

**ORIGINAL**

H. J. Bischoff, for Applicant.

Richard T. Eddy, for Rice Trans-  
portation Company and Security  
Van & Storage Company, Protestants.

BY THE COMMISSION:

OPINION

Motor Service Express, a corporation, has made appli-  
cation for a certificate of public convenience and necessity  
authorizing it to conduct automotive service for the trans-  
portation of property to all points intermediate between  
Los Angeles on one hand and Santa Monica, Ocean Park and  
Venice on the other hand.

A public hearing was conducted by Examiner Williams  
at Los Angeles.

Applicant alleges the following reasons as justifica-  
tion for the granting of the certificate:- That pursuant to  
the provisions of Chapter 213, Statutes 1917, Bert Ritchie,

predecessor in interest of applicant, filed his tariff of rates but in so doing did not name intermediate points between Los Angeles on the one hand and Santa Monica, Ocean Park and Venice on the other hand. That applicant and its predecessors in interest have at all times in good faith served points intermediate Los Angeles, and Santa Monica, Ocean Park and Venice, and that applicant is now advised that a certificate of public convenience and necessity is required of applicant to serve said intermediate points. That applicant has served such intermediate points at the same rates charged for service between Los Angeles and Santa Monica, Ocean Park and Venice, and seeks authority for permission to continue said service at such rates.

The first reason is based upon the prescriptive right possessed by Bert Ritchie and which was duly transferred to applicant herein by Decision No. 7328 on Application No. 5495, dated March 30, 1920. Ritchie was produced as a witness at the hearing and testified he began hauling from Los Angeles to the beach towns in 1912 and continued this service until 1918. His first tariff was filed May 8, 1917, under the fictitious name of Service Motor Express. This tariff (Exhibit No. 1) was offered in evidence and discloses no offer of service except between Los Angeles, Venice and Santa Monica. The tariff does not include intermediate points by name or by general description. One of its provisions was: "Out of line haul 1 mile or less free, over 1 mile 25¢ per mile extra." No route is indicated by the filing. Ritchie testified that he used the Washington Boulevard route through Culver City and thence to Santa Monica, and that he also used the route via Santa Monica Boulevard by way of Sherman, Sawtelle and Beverly Hills to Santa Monica and Venice, and that he went

and returned over both routes as the character of his business required him. Ritchie was positive in his statements as to serving Culver City, Sherman, Sawtelle and Beverly Hills. Ritchie sold the business to Fletcher & Tremble in 1918, and the business was conducted by them under the fictitious name until it was transferred to the Motor Service Express by proper authority of this Commission.

Roy Blake, a witness produced by protestants, testified he drove a truck for Service Motor Express during four months in 1920, and that all shipments were made by truck direct to Santa Monica for distribution to the beach towns. He testified that he had made no deliveries at Sawtelle, Beverly Hills or Culver City.

R. B. Cleaveland, manager of the Rice Transportation Company, testified that he and his father bought the Rice Auto Delivery in September, 1920, and thereupon incorporated it as Rice Transportation Company. Cleaveland testified that at that time and until 1924, Service Motor Express was delivering freight at Culver City, but not at Sherman, Sawtelle or Beverly Hills. E. G. Rice, now manager of Security Van & Storage Company, protestant herein, but formerly a driver for Service Motor Express for five years, testified that applicant herein and its predecessors used only the Washington Boulevard route and did not operate over Santa Monica Boulevard. A. S. Groocox, transportation clerk in the office of the Board of Public Utilities, Los Angeles, produced the records of routes in the City of Los Angeles. These records show that according to its own application for a permit in 1922, applicant herein restricted itself to a movement via Pico Street, Crenshaw Boulevard, thence

south to Washington Boulevard and thence westerly to Venice. Records for 1923 show the same routing as given by the applicant.

L. T. Fletcher, formerly of Fletcher & Tremble, owners of the Service Motor Express, testified that the operation was mainly over the Washington Boulevard route, because this was the best route, but that the trucks returned via Santa Monica Boulevard serving intermediate points.

The testimony summarized above does not indicate that on May 1, 1927, or prior thereto or subsequently, this applicant had any right to serve any points except Los Angeles, Venice and Santa Monica, and it is apparent that so far as its prescriptive establishment is concerned, it must be limited to such service.

Applicant contends that itself and its predecessors have at all times in good faith served points intermediate between Los Angeles, Venice, Ocean Park and Santa Monica, and that public convenience and necessity require that it conduct its business via Washington Boulevard, via Pico Boulevard and Santa Monica Boulevard, and one mile on each side of said boulevards serving all intermediates; that this public necessity exists in addition to whatever prescriptive rights applicant may have.

In support of the existing present necessity, applicant produced Irvin Schapiro, a shoe merchant of Culver City; Eugene Donovan, a printer and publisher also of Culver City; H. K. Barker, a contractor of Beverly Hills; Charles O. Blair, traffic manager of the Zellerbach Paper Company of Los Angeles; Hershell D. Bauman, shipping clerk of the Western Wholesale Drug Company; Carl Scherer, shipping clerk of the Aggeler & Masser Seed Company; Fred Brachman, shipping Clerk of M. A.

Newmark & Company; Glen Monroe, manager of the Builders Hardware Co., Sawtelle; Frederick J. Pease, traffic manager of R. L. Craig & Co., wholesale grocers of Los Angeles, and John C. Atflick, shipping clerk of the Graybar Electric Company. These witnesses testified to a long continued use of the service of applicant herein to intermediate points, and to their general satisfaction with the service given. In general, they each expressed a desire that the service be continued even though there are other carriers, for the reason that the distance to which consignments are shipped is short and shipments are usually "rush." Nearly all of these witnesses representing very large establishments testified that they used the service also of protestants herein, and in the main were satisfied with the service of all carriers.

Since May 1, 1917, the area between Los Angeles and the beach communities has undergone tremendous change. Venice and Sawtelle have been annexed to the City of Los Angeles. Culver City and Beverly Hills are incorporated as cities of the sixth class. In addition, Ocean Park has been annexed to Santa Monica. Except for a small area in Sherman, the boundaries of the communities are contiguous, and any carrier in serving the three beach communities could use any one of three routes, one of which would pass through Culver City, another through Beverly Hills, and another through the unincorporated territory near Sherman. The whole area is built up somewhat compactly, and the former interurban character possessed by it has been altered by almost continuous development of business areas.

We have given full consideration to the record herein and we believe the affirmative testimony introduced by applicant

abundantly justifies, on the basis of present public need, the intermediate service proposed by it between Los Angeles, Venice, Ocean Park and Santa Monica via Washington Boulevard and via Santa Monica Boulevard. There is no testimony, excepting the desire of the applicant, that Pico Boulevard is required. 21

The routes provided in the above paragraph permit the continuation of service of applicant to Sherman, Palms, Sawtelle, Soldiers' Home, Culver City and Beverly Hills. These points were all included in applicant's C.R.C. No. 1 effective May 24, 1926, and the rates for each place are the same as the rates to Santa Monica and Venice. In this proceeding, the reasonableness of these rates is not in question, and applicant will be required to file them under this certificate as the rates to be charged in the future, as requested in his application.

Protestants herein oppose the granting of the certificate, on the ground that it was based upon long continued operation in violation of law. It appears from the record that this discovery was made by the applicant itself, and not by protestants, and that applicant is seeking in the only way possible to correct negligence or ignorance on the part of its predecessors. The protesting lines have been for many years active competitors of applicant to the same points without protesting the service. There is no showing by protestants that their business is unprofitable.

Motor Service Express is hereby placed upon notice that "Operative Rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial

monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

We, therefore, find as a fact that public convenience and necessity justify the relief sought by applicant herein, and the following order will fix and establish its rights for the future:

O R D E R

Motor Service Express, a corporation, having made application to the Railroad Commission for a certificate of public convenience and necessity to serve all intermediates between Los Angeles, Venice, Ocean Park and Santa Monica, a public hearing having been held, and the matter having been duly submitted, and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby declares that the public convenience and necessity require the establishment by the applicant herein of service to all points intermediate to Los Angeles, Venice, Ocesn Park and Santa Monica over and along the following route:

Via Washington Boulevard,

Via Santa Monica Boulevard;

provided, however, that applicant herein may make free delivery and pick-up within one mile of each side of said route, and that a certificate of public convenience and necessity therefor be, and the same hereby is, granted subject to the following conditions:

1. Applicant shall file with this Commission within a period of not to exceed ten (10) days from date hereof, its written acceptance of the certificate

herein granted as an extension and enlargement of its present operative rights, and not as a new or separate right.

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 contained in section 11 of applicant's C.R.C. No. 1, effective May 24, 1926, now on file with this Commission, 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 it 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 27<sup>th</sup> day of April, 1928.

Leon A. Whittell  
C. C. Seamy  
Thos. S. Louisa  
M. J. Quinn  
Commissioners