

Decision No. 13381.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of
LOS ANGELES AND SANTA BARBARA MOTOR
EXPRESS COMPANY, INC., for authority
to operate over alternate routes via
Lompoc between Harris Station and
Buellton and Las Cruces.

ORIGINAL

) Application No. 13888.

E. L. MCCONNELL, Proprietor of
Valley and Coast Transit Co.
of San Luis Obispo,

) Complainant,

) Case No. 2444.

) vs.

LOS ANGELES AND SANTA BARBARA
MOTOR EXPRESS COMPANY, a
corporation,

) Defendant.

In the Matter of the Application
of LOS ANGELES AND SANTA BARBARA
MOTOR EXPRESS CO., INC., a corpora-
tion, for certificate of public con-
venience and necessity allowing
applicant to extend its service be-
tween Los Angeles and Santa Barbara
to and including San Luis Obispo and
intermediate points.

) Application No. 10748.

In the Matter of the Investigation on
the Commission's own motion into the
rates, rules, regulations, service and
operation of L. E. MOREHART, S. J.
RUSSNER, W. BENDASHER, SOUTHERN PACIFIC CO.
and AMERICAN RAILWAY EXPRESS COMPANY
operating auto truck service between
Surf and Lompoc.

) Case No. 2461.

Hugh Gordon, for applicant Los Angeles and Santa
Barbara Motor Express Co. in Apps.
13888 and 10748, and Cases 2444 and
2461.

Edward Stern, for American Railway Express Company,
protestant in App. 13888, interested
party in Case 2461 and App. 10748.

Warren Libby and H. N. Blair, for complainant in Case 2444, as protestant in Apps. 13888 and 10748, and as interested party in Case 2461.

E. I. Clarke and W. T. Masongill for Pacific Coast Railway Company, protestant in Apps. 13888 and 10748.

E. W. Hobbs, for respondents Southern Pacific Company and L. E. Morehart in Case 2461.

E. W. Hobbs and W. S. Johnson, for Southern Pacific Company, protestant in Apps. 13888 and 10748, also for W. Bendasher and S.J. Ruffner in Case 2461.

BY THE COMMISSION:

O P I N I O N

Los Angeles and Santa Barbara Motor Express Company, Inc., applicant in Application 13888 requests from this Commission a certificate of public convenience and necessity to operate a motor freight and truck service from Las Cruces to Harris Station via Lompoc, and from Buellton to Harris Station via Lompoc, connecting with an existing service operated by it from Los Angeles to San Luis Obispo.

Case 2444 relates to a complaint filed by E. L. McConnell against applicant alleging that the latter has been violating the Auto Stage and Truck Transportation Act in carrying on its operations, which are alleged to be unauthorized, between San Luis Obispo and Los Alamos, Buellton and places intermediate between Los Alamos and Buellton or traffic having origin or destination within San Luis Obispo. In an answer duly filed defendant set up in effect that Decision No. 15665 in Application No. 10748 authorized the operations complained of. In order to properly reach the matter so as to allow the Commission to modify

its Decision No. 15665, if complainant's contention was proven correct, Application No. 10748 was reopened for further hearing.

Case 2461 is an investigation upon the Commission's own motion and concerns itself with the alleged unlawful operations by L. E. Morehart and certain others of a motor truck service between Surf and Lompoc, and was instituted for the purpose of determining whether or not it is such a service as requires authorization by this Commission.

Public hearings on these matters were had before Examiner Vaughan at Santa Maria, Lompoc and Los Angeles, and were consolidated for purposes of hearing and decision. The same have been duly submitted, and are now ready for decision.

The main issue involved is whether or not public convenience and necessity requires the operation by Los Angeles and Santa Barbara Motor Express Company of a motor truck service to Lompoc over the alternate routes as above defined, and it is to this main issue that we will first address ourselves. The record in behalf of the applicant shows the following:

W. W. McKee, Secretary and Manager of applicant company testified that applicant presently operates between Los Angeles and San Luis Obispo; and intermediate points between Los Angeles and Santa Barbara and intermediate points between Buellton and Orcutt. The company was organized in 1920 with headquarters at Santa Barbara, and has thirty trucks available for main line service and fifteen for use in pickup and delivery service. The service proposed contemplates the pickup of freight within a radius of ten miles on either side of the road. This witness estimated that there would be available about five tons per day during the shipping season to Los Angeles out of Lompoc. Applicant has been rendering contract service from Los Angeles to Lompoc and will

continue to provide such service regardless of the outcome of its application.

R. C. Lilley, in charge of the Lompoc Produce and Real Estate Company's office in Lompoc, testified that he would use applicant's service for shipping beans, mustard seed, hay and grain in LCL lots between Los Angeles and Lompoc, and would ship about 12,000 sacks of beans and some mustard seed to Los Angeles during the harvest season. On cross-examination he admitted that he had no knowledge as to what the proposed service was offering as to rates or time of service.

R. P. Brown, a druggist having stores in both Lompoc and Santa Barbara, and a present user of applicant's service from Los Angeles to Santa Barbara testified that owing to his need for expedited service he would patronize applicant. He testified that he ships by express only when obliged to, usually once or twice a year; that he uses parcel post twice a week, and freight service two or three times a month, and that the bulk of his shipments are by parcel post.

E. W. Hollowell, a salesman for Shinn, Holtz & Lyon, dealers in wholesale plumbing supplies at Santa Barbara, testified that he might use applicant's proposed service once ^{every} / week or two, and that he found the freight service to Lompoc unsatisfactory.

John Fent, a dealer in wholesale tires at Santa Barbara testified that he would ship over applicant's line to the two tire dealers located in Lompoc twice a month from Santa Barbara, plus emergency shipments.

F. R. Dolan, an electrical jobber of Los Angeles and Santa Barbara, conducting the "Tri-Counties Electrical Supply" testified that he would use applicant's service and the follow-

ing testified substantially to like effect: Alex Main, engaged in the concrete construction business at Lompoc, Walter R. Beattie, an agriculturist residing in Lompoc Valley, Wm. F. Hobbs, General Manager of C. T. Gunderson, dealer in Ford automobiles and farm implements, and Ernest E. Turnbull, salesman for Goodrich Rubber Company.

John E. Nicholas, Sales Manager of Rivers Bros. Company, wholesale fruit and produce merchants in Los Angeles, testified that he would probably use applicant's service if his customers so designated.

Henry W. Courtney, Traffic Manager for Bishop & Company, dealers in candy, peanut butter, and other confectionaries testified that his Company had 19 customers at Lompoc; that he controlled the routing, and that it would be very advantageous for his concern if the proposed service were inaugurated.

H. D. Bauman, Traffic Manager for the Western Wholesale Drug Company testified that the applicant's present service into Santa Barbara has been very satisfactory, and that he would use the proposed service if the customers of his firm were satisfied. He admitted, however, that his customers controlled the routing. He now uses the Southern Pacific, American Railway Express, and Parcel Post to Lompoc, but prefers transportation by automotive truck.

Gaston Dreyfus, a buyer and shipper of produce at Lompoc testified that he would use the proposed service in shipments from Lompoc to Los Angeles, which would consist of about 1200 to 1500 tons per year, and that he would ship all by truck if there was a daily operation at reasonable rates.

J. R. Lind, operating a bakery and restaurant at Lompoc receives lard compound and paper products from Los Angeles to

the extent of about 500 pounds per week. He testified, that the proposed service would be of a convenience to him, but admitted that service being equal, he would ship via the carrier having the most reasonable rates. - On cross-examination he admitted that the express service was satisfactory.

Percy Kirkpatrick, a butcher at Lompoc testified that the proposed service would be a convenience in getting meats from Los Angeles to Lompoc quicker than by freight, and in better condition because shipped at night. During some weeks he would receive two or three shipments from Los Angeles which would vary from 100 to 400 or 500 pounds. He has no complaint about the express service, but complained that freight service is slow.

The following testified on behalf of protestant American Railway Express:

Chas. B. Egbert, residing at Glendale, dealer in whole-sale magazines, ships magazines to Lompoc about three times per month. He testified that he uses express service; that it is entirely satisfactory, and that there is no need for additional service.

C. T. Moyer, poster clerk for Fox Film Exchange in Los Angeles, ships films to Lompoc by express, and testified that he believes that the express service is entirely satisfactory. Shipments under ten pounds are sent by parcel post.

E. Saito, the owner of United Distributor, dealers in fruits and vegetables in Los Angeles, testified that he receives shipments daily by express during the season and that this service is satisfactory; that the farmers route the shipments, and that truck service is unsatisfactory with respect to the strawberries and soft fruits because it shakes them too much.

Yoshio Kami, bookkeeper for American Produce Company at Los Angeles, testified that as concerns his shipments dependability of service is the main factor; that the time of arrival is more important than condition of shipment, and that he has found express service more dependable than the service rendered by trucks.

B. H. Cahn, a Shipping Clerk for Bert Landers, Inc., display fixtures and clothing, M. Igasaki, receiving clerk for the Highland Fruit Company, and C. A. Washburn, Receiving Clerk for Zaferis Bros. Produce Company, testified that the existing express service was satisfactory for their needs.

Stanley Watts, a dealer in groceries and fruits at Lompoc, testified that his freight shipments from Los Angeles average from one and one-half to two tons per week, only emergency shipments being made by express. Both services are satisfactory to him but he has no objection to additional service.

P. M. Skaarup, a farmer residing near Lompoc, testified that he ships vegetables more or less daily during the season by express to Los Angeles; that this service is satisfactory, and that he does not see any necessity for additional service by motor truck. His daily shipments during the harvest season average from one-half to two or three tons.

W. J. Baker connected with the Lompoc Theatre stated that he receives films every other day from Los Angeles by express; that the service is satisfactory, and that no additional service is necessary. A. M. Melby, a jeweler of Lompoc testified to like effect.

R. C. Canfield, a farmer residing four and one-half miles from Lompoc, testified that he ships peas to Los Angeles

and lettuce to Santa Barbara and Los Angeles daily during the harvest season. He stated that wholesalers in Los Angeles have expressed preference to him for shipment by rail because refrigeration service is offered. He stated that he was satisfied with the present service.

M. K. Lewis of the Lewis Implement Company; Frank J. Miller, a baker; Frank I. Callis, a dealer in dry goods and furnishings; Mrs. Minnie Inglis, proprietress of a candy store; L. G. Fabing, a dealer in plumbing and sheet metal; E. J. Rudolph of the Rudolph Grocery and Hardware Company; Ernest F. Moore, part owner of the Moore Mercantile Company; R. P. Batkin, a dealer in meats and groceries; Leslie K. Smith of the Smith Hardware Company; Benjamin F. Ruffner, Proprietor of a garage, and Wm. McGee, all located at Lompoc, testified that they had been using the American Railway Express service, and had found it satisfactory.

Walter Murray, a dealer in fruits at Lompoc, testified that he ships to Los Angeles by express exclusively; that refrigeration service is necessary for him; that he would not patronize the truck service without refrigeration, and that truck service is unsatisfactory because trucks vibrate too much.

John H. Cain, route agent for the American Railway Express Company testified regarding the service rendered by his company to Lompoc.

The following testified on behalf of protestant Southern Pacific Company:

Louis Euseman, a dealer in real estate and insurance at Lompoc, testified that the Lompoc-Las Cruces road has not been completed; that its completion is not an insured fact, and that thus far improvement is being proposed by the Lompoc Chamber of

Commerce.

James M. Cardwell, Staff Officer for the Superintendent of the Southern Pacific Company at San Luis Obispo testified that the LCL service from Los Angeles to Lompoc is daily except Sunday; that on Mondays, Wednesdays and Fridays shipments from Los Angeles arrive about 6 p.m., and on Tuesdays, Thursdays and Saturdays about 2:10 p.m.; that service from Santa Barbara into Lompoc is tri-weekly, and that relatively few complaints as to service have been received.

Floyd Slee, the company's agent at Lompoc, and Harry Hansen, District Freight Agent located at Santa Barbara, both testified relative to the operations of the Southern Pacific Company into Lompoc.

A. C. Witmore, agent for the Southern Pacific Milling Company, testified that he usually ships beans in carload lots from Lompoc, and that there is no need for additional service.

J. Tikuyama, Assistant Manager of the Guadalupe Produce Company near Lompoc, and F. E. Belcher, furniture dealer and undertaker of Lompoc testified on behalf of protestants Southern Pacific Company and American Railway Express Company, and in effect testified that they used both services, and had found them to be entirely satisfactory.

We conclude from the evidence herein set forth and other evidence appearing in the record that applicant, Los Angeles and Santa Barbara Motor Express, Inc., has failed to show public convenience and necessity for the proposed service. The application will therefore be denied.

With reference to the complaint in Case 2444 we are of the opinion that the same is not well founded for the reason that by and under Decision No. 15665 in Application No. 10748, defendant Los Angeles and Santa Barbara Motor Express, Inc. was

granted authority to operate between San Luis Obispo and Los Alamos, Buellton, and places intermediate between Los Alamos and Buellton on traffic having origin or destination within San Luis Obispo. Case 2444 will therefore be dismissed and Decision No. 15665 in Application No. 10748 will be affirmed.

The record respecting Case No. 2461 shows that sometime in May, 1926, the Southern Pacific Company changed its operating time schedule between Lompoc and Surf by discontinuing the operation of one of its trains which had been operating daily for the transportation of shipments of freight, express, baggage and mail received from through trains operated by it which stopped at the junction point of Surf. In lieu of part of the service as discontinued the Southern Pacific Company entered into a contract with L. E. Morehart whereby the latter agreed for a stipulated sum per month to transport the shipments of freight, express, baggage and mail for the former between Surf and Lompoc. This operation is made daily over the only public highway between these points. No certificate of public convenience and necessity has ever been granted to Morehart nor was he conducting such service prior to the effective date of the Auto Stage and Truck Transportation Act so as to be relieved of the requirement of obtaining such a certificate.

It is urged that the situation is one over which this Commission has no jurisdiction for the reason that the operation is being conducted under private contract, and it is claimed that the situation is similar to that which existed in Frost vs. Railroad Commission, 271 U.S. 583. We do not so view the matter. In the Frost case private property was being transported for a private person by a private carrier, while here property in common carriage is being transported for a common carrier by one claiming to be a private carrier. The situations are entirely

dissimilar. It is our opinion that Morehart in acting as the transporting agency of property in common carriage for the Southern Pacific Company, a common carrier, has become a common carrier and since he has not obtained a certificate of public convenience and necessity as is required by and under the laws of this State, he should be ordered to cease and desist forthwith from the operations in question. It appears that none of the other parties named as respondents is carrying on any operations of a common carrier nature over the route in question, and as to them the investigation will be dismissed.

An order in conformity with the above will be entered.

ORDER

The proceedings as above numbered and entitled being now pending before the Commission, public hearings having been held thereon, the same having been duly submitted after consolidation for purposes of hearing and decision and being now ready for decision,

IT IS HEREBY ORDERED that Application No. 13223 be and the same is hereby denied.

IT IS HEREBY FURTHER ORDERED that Case No. 2444 be and the same is hereby dismissed.

IT IS HEREBY FURTHER ORDERED that Decision No. 15663 in Application No. 10743 be and the same is hereby affirmed.

IT IS HEREBY FURTHER ORDERED that L. E. Morehart be and he is hereby ordered to cease and desist forthwith from any further operations by motor truck between Surf and Lompoc as such operations are described in the opinion preceding; this

order, and

IT IS HEREBY FURTHER ORDERED that Case No.2461 be and the same is hereby dismissed as to S. J. Ruffner, W. Bendasher, Southern Pacific Company and American Railway Express Company.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Railroad Commission mail a certified copy of the opinion and order herein to the District Attorney of Santa Barbara County.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

July
Dated at San Francisco, California, this 3rd day of July, 1928.

Leon O'Connell
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Thos. L. ...

COMMISSIONERS.