

ORIGINAL

Decision No. 20754

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of an Investigation on)
 the Commission's Own Motion into the)
 practices and operations of TEHACHAPI)
 TRANSPORTATION COMPANY, a corporation,)
 operating an automotive trucking ser-)
 vice between Los Angeles and Randsburg)
 and other points.)
 CASE NO. 2616

In the Matter of the Application of)
 PACIFIC INTERURBAN TRANSPORTATION COM-)
 PANY for certificate of Public Con-)
 venience and Necessity to operate an)
 automobile truck service for the trans-)
 portation of freight as a common car-)
 rier between Los Angeles, California,)
 and Randsburg, California.)
 APPLICATION NO. 15146

Leslie L. Heap, for Respondent in Case No. 2616,
 and Protestant on Application No. 15146.

Schweitzer & Hutton by Frank S. Hutton, and
 F. C. Stevens, for Applicant.

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

E. T. Lucey and G. E. Harrison, for The Atchison,
 Topeka & Santa Fe Railway Company, Protestant.

BY THE COMMISSION:

O P I N I O N

By its Order in Case No. 2616, the Railroad Commission cited Tehachapi Transportation Company, a corporation, to appear and show cause, if any, why any and all operative rights possessed by it under Decision No. 15825 or otherwise for operation of motor truck service between Randsburg and Los Angeles and other points, should not be revoked and annulled for illegal or unlawful operation.

L. Amsell and M. S. Amsell, co-partners adopting the fictitious name of Pacific Interurban Transportation Company, for business purposes, have made application for a certificate of public convenience and necessity to operate an automobile truck service for the transportation of freight as a common carrier between Los Angeles and Randsburg and other points.

Public hearings were conducted by Examiner Williams at Los Angeles and Randsburg.

Tehachapi Transportation Company, a corporation, possesses a certificate issued by this Commission under Decision No. 15825 (originally issued to John H. Eagle and subsequently transferred to the corporation) for the transportation of freight from Los Angeles to Randsburg, Osdick, Atolia, Inn City, Hampton and Johannesburg.

According to the records, the corporation never issued but three shares of stock which were owned by the Colletti Truck Company. The corporation conducted the business until about October 1926, when an alleged sale of the stock was made to Thomas H. Ellison, Robert R. Ellison, Charles A. Ellison and Ella Ellison. According to the testimony of the Ellisons, \$1500.00 was to be paid for the stock and control of the corporation and the certificate it possessed, of which \$500.00 was paid at the time of purchase. Neither the Ellisons's nor other records were produced to show that any other payment had been made. The fact was established that since October, 1926, Tehachapi Transportation Company conducted no business under the certificate, except as it may have been conducted by the Ellisons. In the meantime, Colletti Truck Company became insolvent and passed into the hands of a trustee in bankruptcy in the United States courts,

and said bankruptcy is still pending therein unsettled. Subsequent to acquiring the stock of the corporation, the Ellisons conducted the service from a terminal in Los Angeles on South Alameda Street. The operations seem to have been conducted without difficulty until June, 1928.

In June, 1928, and thereafter, various shippers made complaint to this Commission that they had been unable to recover C.O.D. amounts collected by Techachapi Transportation Company and not returned to the consignor. According to the testimony of James P. Britt, Assistant Secretary of the Railroad Commission at its Los Angeles Office, four complaints were filed, being Informal Complaints Nos. 10657, 10671, 10672 and 10792, all stating that C.O.D. amounts had been retained by the carrier which it was making no effort to repay, some of them being of months' standing, to the consignors. The amounts represented in these complaints were not large, except one of the Ingersoll-Rand Company which aggregated \$381.50. The files of these informal complaints were admitted in evidence without objection, and showed that the Commission sought to require the Company to restore this money to the consignors, but was met with the answer that the matters would be taken care of in time.

Subsequently Thomas H. Ellison appeared at the office of the Commission and subscribed to a statement that he was unable to meet the payments, but would try to finance himself for the purpose of discharging them.

About the same time, under the direction of the Commission, Mr. D. W. Davis, an accountant employed by the Commission, was directed to investigate the books and records of the corporation, to ascertain what amounts were owing to consignors who had entrusted shipments on a C.O.D. basis. Mr. Davis discovered from his investigation of the books that twenty shippers had not been paid the amounts collected for them in the aggregate of \$1195.28. Other amounts discovered after

the investigation of the books were added to this amount and increased it to \$1296.52. At the hearing, Thomas H. Ellison (testifying as President of the corporation) stated that these amounts were correct and owing, and that he had been unable to pay them, because of financial arrangements he made in the leasing of a terminal and the acquisition of trucks.

It appears that in March, 1928, Thomas H. Ellison entered into an arrangement with one F. G. Bradbury by which the corporation acquired a terminal on South Alameda Street and also several trucks, and in this transaction entered into a contract with Bradbury by which Bradbury was to advance the terminal rental and the trucks, upon the agreement of the Ellisons and the corporation that all the income from the business would be deposited in bank in the name of Bradbury, and that he would make checks for the expenditures as required. Under this contract, all the receipts of the business, including C.O.D. amounts, were deposited in Bradbury's name. It also appears that no amount owing a consignor was ever checked out by Bradbury to the credit of the consignor, and in default of payments otherwise, under the contract, Bradbury brought suit to foreclose a mortgage upon the equipment given originally to secure the payment of the amounts due Bradbury, and recovered judgment thereon together with a deficiency judgment later, in the Superior Court. This action by Bradbury forced the Tehachapi Transportation Company from its terminal, and for a period it occupied part of a terminal on Colyton Street and later removed its terminal to 3066 West Pico Street. A terminal also was maintained at Randsburg.

The operation was conducted by Thomas H. Ellison and is still being conducted by him, using one truck - six years old, of obsolete manufacture and of doubtful efficiency, in view of the testimony of several break-downs which occurred, and some of which

entailed a loss of perishable goods.

It appears from the detailed exhibits and testimony that was produced, that until March, 1928, respondents conducted the operations properly and remitted C.O.D. accounts promptly. Subsequent to March, 1928, there was not only a failure to remit the moneys due consignors, but there was also a loss of equipment and general deterioration of the service to a point where the use of one truck from an inconvenient terminal was a mere operation in name. Added to this, the testimony shows that the service was defective in some of its deliveries. On the whole, however, the record shows that Ellison struggled without compensation to himself to keep the operation alive and attempted many expedients to finance himself to clear the obligations that had accrued from the contract with Bradbury. At the final hearing, respondent corporation was unable to offer any assurance to the Commission of a method by which the C.O.D. amounts, long overdue consignors, could be repaid, except the promise to organize these creditors and apply a certain amount of the profits each month to the reduction of the total. In view of the fact that it is the testimony of Mr. Ellison that the operation has not been conducted at a profit since March, 1928, and his inability to procure suitable equipment, or to organize the business properly for the transportation of public business, such an offer cannot be received as justifying the prolongation of the service.

It appears further that respondent now owes, in connection with the public business, the following amounts:

C.O.D. Accounts - - - - -	\$ 1 296 52
Deficiency Judgment- - - - -	5 000 00
Note - - - - -	750 00
Newton Debt- - - - -	100 00
Jerry Lemaster - - - - -	300 00
On Stock Purchase- - - - -	<u>1 250 00</u>
	\$ 8 646 52

A public carrier who is entrusted by shippers with their property and is compensated by special rates for the collection of moneys due thereon, has no other duty than to transport the goods to the consignee and return either the undelivered goods or the money to the consignor within a reasonable time, usually not to exceed a week or ten days. Had respondent herein practiced such dealing with shippers, instead of depositing the money to the credit of a third party for the purpose of extinguishing a mortgage indebtedness, this condition would probably not have arisen, although the record is not clear that had he done this, the business would have been profitable as conducted by the corporation. It is also not clear that the Ellisons ever did more than make a payment upon the stock of the corporation, and this stock was never issued to any or all of them, nor was any party able to explain where this stock is, or whether the corporation had any meetings other than a meeting where officers were elected. In fact, it is doubtful if the Ellisons ever had valid possession of the stock of the corporation or were ever entitled to conduct service under the certificate it possessed. Although counsel for the trustee in bankruptcy was informed of the pendency of the citation against the corporation, no showing was made in behalf of the bankrupt's estate.

Under such facts, the Commission finds it necessary in the public interest to cancel and revoke the right of the corporation, or those claiming its control, to conduct any further operation, and such an order will be entered.

In their application to establish freight transportation service between Los Angeles and Randsburg, L. Amsell and M.S. Amsell, co-partners, offered to equip such service with new, six-wheel trucks, to establish terminals at both Los Angeles and Randsburg, and to furnish bond for the protection of shippers as to any C.O.D. collec-

tions, and to further fully cover their operations with public liability, cargo, collision, property damage, confiscation, fire theft and embezzlement insurance. The applicants have had several years experience in conducting the transportation of scenery, baggage and freight under contract with the West Coast Theatres, Incorporated, and all of its subsidiaries and affiliated theatres, and have ample means to establish and conduct the service as proposed by them. They propose a service three times weekly, that is, going from Los Angeles to Randsburg on Monday, Wednesday and Friday, and returning on Tuesday, Thursday and Saturday. Applicants also ask authority to serve the intermediate point of Hampton and all other intermediates between Mojave and Randsburg.

Applicants were supported by the testimony of E. M. Lane, traffic manager of the Gudahy Packing Company, shipping a very good volume to the points concerned; Lawrence B. Dennis, traffic manager of the Hauser Packing Company; W. F. Domke, traffic manager of Joannes Brothers, wholesale coffee, etc., and Rex S. Sawyer, traffic manager of the Associated Jobbers of Los Angeles. In addition, Ernest L. Carson, bookkeeper for the Rand Mercantile Company at Randsburg; Clifford K. Dennis, superintendent of the Atolia Mining Company at Atolia; C. W. Platt, grocer, Atolia; Wilson H. Jones, druggist, Randsburg; D. M. Griggs, storekeeper at Atolia; Mr. Atkinson and Mrs. Witt, storekeepers at Randsburg, testified as to the need of truck shipments from Los Angeles.

The record presents applicants who offer to assume the transportation service desired by the shippers of Los Angeles and those of Randsburg, who come before the Commission with clean hands and a satisfactory experience as private carriers, and who are able to finance, without aid, the transportation business and conduct it

with adequate service. While these applicants propose a schedule of operation that we feel would be desirable, we must call their attention to the fact that the schedule seems too rapid for consistency with either the route to be followed, or the restrictions imposed by the Motor Vehicle Act. Applicants, therefore, will be authorized to restrict their schedule so as to bring the operations clearly within the range of probabilities as to time. The rates proposed by applicants for this service are contained in their amended Exhibit "B" filed during the hearing, which rates appear to be practically the same as those of the preceding operations, and which witnesses testified would be satisfactory to shippers.

We, therefore, find as a fact upon the record herein, that the application of L. and M. S. Amsell should be granted, and an order accordingly will be made.

L. Amsell and M. S. Amsell, co-partners, adopting the fictitious name of Pacific Interurban Transportation Company, are 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 as to the number of rights which may be given.

ORDER

An order having been issued on October 8, 1928 to Tehachapi Transportation Company, a corporation, to show cause why the certificate of public convenience and necessity heretofore granted said corporation by Decision No. 15825 (originally issued to John E. Eagle and subsequently transferred to said corporation) should not be revoked, a public hearing having been held, the matter having been duly sub-

mitted, and the Commission being fully advised, and basing its order on the findings of fact in the opinion preceding this order,

IT IS HEREBY ORDERED that the certificate of public convenience and necessity heretofore granted by its Decision No. 15825, dated December 31, 1925, on Application No. 12347, granting to said Tehachapi Transportation Company, a corporation, the right to operate an automobile truck line as a common carrier of freight between Los Angeles and Randsburg and other points, be and the same is hereby revoked and cancelled, and that said Tehachapi Transportation Company cease all operations as heretofore carried on under said certificate.

L. Amsell and M. S. Amsell, co-partners, operating under the fictitious name of Pacific Interurban Transportation Company, having made application to the Railroad Commission for a certificate of public convenience and necessity to operate an automobile truck line, as a common carrier of freight, between Los Angeles and Randsburg and certain other points and all points intermediate to Mojave and Randsburg, a public hearing 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 require the operation of the automobile truck line, as a common carrier of freight, between Los Angeles and Randsburg, Osdick, Atolia, Inn City, Hampton and Johannesburg and all points intermediate to Mojave and Randsburg, as applied for, over and along the following route:

Via State Highway from Los Angeles through Saugus, Mint Canyon, Antelope Valley to Mojave; thence north over the State Highway to Randsburg, and returning by identically the same route; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted subject to the following conditions, provided, however, that no service may be rendered at any point between Los Angeles and Mojave, inclusive of Mojave:

- 1 - Applicant shall file its 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 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 5th day of February, 1929.

Thos D. Loutin
C. Seaver
Leon A. Whittell
W. J. Kim
Commissioners.