

Decision No. 21195

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
ROBERT V. HARDIE
for certificate of public convenience
and necessity to operate an automobile
truck service between Los Angeles and
Bishop and intermediate points.

Application
No. 14544

In the Matter of the Application of
MOTOR FREIGHT TERMINAL CO.
a corporation, substituted for G. M.
DUNTLEY, for certificate of public
convenience and necessity authorizing
the operation of an auto truck freight
service between Los Angeles and Bishop,
Big Pine, Independence, and other points
in Owens Valley and intermediate points.

Application
No. 14551

In the Matter of the Application of
R. J. FREDERICKS
for certificate of public convenience
and necessity to operate an automobile
truck freight and express service be-
tween Los Angeles, California, and Bishop,
California, and intermediate points be-
tween Mojave and Bishop.

Application
No. 14584

Sebald L. Cheroske and Morrow & Emery, for Robert V.
Hardie, Applicant in Application No. 14544, and
Protestant in Applications Nos. 14551 and 14584.

Hugh Gordon, for G. M. Duntley, Applicant in Appli-
cation No. 14551, and Protestant in Applications
Nos. 14544 and 14584.

Harvey W. Guthrie, for R. J. Fredericks, Applicant
in Application No. 14584, and Protestant in Appli-
cations Nos. 14544 and 14551.

W. S. Johnson, for Southern Pacific Company, Protest-
ant in all Applications.

Edward Stern and Mark Thompson, for American Railway
Express, Protestant in all Applications.

Edward Stern, for Owens Valley Transportation Company,
Protestant in all Applications.

Newlin & Ashburn, by A. T. George and L. G. Markell,
for California Transit Company, Protestant in all
Applications.

BY THE COMMISSION:

O P I N I O N

Applicants herein each seeks a certificate of public convenience and necessity to establish automobile service for freight, as a common carrier, between Los Angeles and Bishop and points intermediate to Mojave and Bishop. Except as to deviations as to schedules and rates, which are discussed in more detail elsewhere, the service proposed by each applicant is about the same and to the same points, each agreeing to except from his operation any local haul between Lone Pine and Bishop where such service is now given by protestant Owens Valley Transportation Co., a freight service under regulation of this Commission. At the original hearing another applicant, Frank Chappell (App. 14648) failed to make any appearance then or later, and this application was dismissed for want of prosecution, by Decision No. 20264.

The applications were protested by the Southern Pacific Company, American Railway Express and California Transit Company, the two first named being the most serious antagonists of the proposed service.

Public hearings herein were conducted by Examiner Williams at Bishop, Independence, Lone Pine and Los Angeles; twelve days were consumed in the hearings, the matters were submitted upon briefs, and the matter is now under submission and ready for decision.

The establishment of such service from Los Angeles to points north of Mojave will open the Owens Valley territory to freight trucking competition with the Southern Pacific Railroad which, for twenty years, has been the sole through public carrier between Los Angeles and points north of Mojave to Bishop. This

service of the Southern Pacific has not been to the communities, but distant from them from $1\frac{1}{2}$ to 5 miles, and the intervening transportation has been conducted by truck operators under the jurisdiction of this Commission.

The rails of the Southern Pacific railway are broad gauge from Mojave to Owenyo, at which point the freight destined for delivery north of Owenyo (transportation equivalent, Lone Pine) must be transferred to the narrow gauge system of the Southern Pacific operating from Keeler on the east bank of Owens Lake northwardly through Montgomery Pass to Mina, Nevada. This transfer affects not only freight, but passengers and express matter, and involves rehandling and necessary delay to accomplish the transfer. It is the substantial allegations of applicants herein that this process of transportation is cumbersome and costly and involves unnecessary delay, and that all the disadvantages of this method are eliminated by the establishment of direct service over the State Highway which passes through the heart of each community north of Mojave, and particularly the larger communities, Lone Pine to Bishop, inclusive.

Applicants propose generally an over-night service from Los Angeles with store-direct deliveries along the route between Lone Pine and Bishop in the morning and afternoon, and their contention is that this service is not only a convenience to the shipping public of Los Angeles and Owens Valley, but is an absolute necessity under present-day business conditions, under which storekeepers, by possessing rapid truck delivery, may reduce their stock investments, thus curtailing the capital used in the business, and supply their needs by telegraph or telephone order with practically 24 hours delivery. As against this, protestants Southern Pacific Company and American Railway Express present their operations as adequate and efficient for the territory served and the volume of business, and indicate that intrusion of authorized competitive service will impair that adequacy and efficiency, and

imperial, the continuance of the service now being given.

Protestant California Transit Company is in a different position. By Decision No. 20024 on Application No. 12402, this protestant was authorized to establish through passenger service from Los Angeles to points north of Mojave and to Bishop, and was permitted to carry express not to exceed 100 pounds upon the passenger stages used. In making this grant, the Commission authorized California Transit Company to purchase the operative rights of the Owens Valley Transportation Company between Lone Pine and Bishop, which local rights were for passengers, express and freight. The attitude of this protestant is that the freight service between Lone Pine and Bishop is adequate to care for all deliveries made at Lone Pine station and intended for distribution to all points to and including Bishop; that its express service is adequate from Los Angeles in addition to the express service maintained by American Railway Express.

Upon these issues, protracted hearings were held, and a large record of oral testimony and exhibits made, and which we will now consider in their different branches.

Applicant Hardie proposed schedules daily from Los Angeles to Bishop from May to September, and twice weekly from October to April. He proposes to use six-cylinder pneumatic-tired vehicles in whatever number may be necessary to handle the business, and includes in his offer of service and rates free pick-up and delivery one mile on each side of the route traversed. He also proposes a pick-up zone in Los Angeles of dimensions similar to the usual freight pick-up zone of freight carriers, with minimum rates as to tonnage.

Applicant Hardie, during the hearings, amended his rate schedule Exhibit "A" attached to the application, reducing the class rates in truck lots; also, he withdrew his distance rates

as part of the original offer; also, amended his time schedule by offering daily service, instead of only twice weekly, from November to April, inclusive. He also joined with other applicants in excluding any local haul between Lone Pine and Bishop, inclusive.

Applicant Motor Freight Terminal Company (substituted for Duntley) proposes similar service over the same route, offering four $3\frac{1}{2}$ to 5-ton 6-wheel trucks for line service, and $1\frac{1}{2}$ -ton truck for pick-up in Los Angeles. The rates include free pick-up one-half mile from the route traversed, with one mile for consignments of 500 pounds or more, and five miles free pick-up and deliveries on quantities of six tons or more. The free pick-up and delivery zone in Los Angeles is the same as that used by applicant Motor Freight Terminal Company for its Santa Barbara, Bakersfield and oil field lines. It proposes rates also for C.O.D. service.

Applicant Fredericks proposes a daily service throughout the year with three 2-ton trucks, and proposes, in his amended application, rates to all points north of Mojave.

Applicant Hardie proposes a schedule involving 20 hours for transportation between Los Angeles and Bishop. Applicant Duntley proposes a schedule of 19 hours, and applicant Fredericks a schedule of 15 hours and 25 minutes. The record does not disclose that the time fixed by applicant Fredericks is possible of accomplishment with loaded vehicles and time out for deliveries. Each carrier proposes four classes of rates with various commodity rates.

Applicant Hardie, testifying in his own behalf, stated that he had been for eight years operating the Glendale Interurban Express, a freight line between Los Angeles and Glendale, contiguous cities; further, that in April, 1927, he circulated a petition in

Owens Valley, and received some 120 signatures thereto for business men and merchants and agriculturalists who favor the service proposed by him. Based upon this, he filed Application No. 13770, and a date was set for hearing thereon at Lone Pine. Just prior to the date set for hearing, the failure of the Watterson Brothers' Bank at Bishop and allied interests, disrupted and depressed business affairs in Owens Valley, and, upon the advice of counsel, applicant dismissed the application when called for hearing. Subsequently, upon a reinvestigation of the field, he filed the present application. He testified that his investigation shows that from 50 to 70 tons of freight are moving into Owens Valley points weekly by so-called contract carriers whose rates are often lower than freight by rail, being between 80 cents and \$1.00 per 100 pounds. Hardie admitted that express has next-day delivery, and that this is accomplished by truck carriers between rail stations and the community. He also stated that the rates proposed by him were practically the equivalent of rail rates plus local truckage.

G. M. Duntley, testifying in behalf of Motor Freight Terminal Company (applicant by substitution), testified that this corporation, of which he is president, owns a terminal in Los Angeles which cost \$297,000, that it operates 46 trucks in its public operations, that it has abundant extra equipment to devote to the service.

Duntley also testified that the company is prepared to establish the same class of service this company now maintains to Santa Barbara, San Luis Obispo, Bakersfield and Taft,--six-wheel, ten-ton pneumatic-tired trucks. The company now uses 15 refrigerator trucks for perishables, and will use the same equipment in Owens Valley in summer. Also, that suitable terminal will be established in Owens Valley, and emergency equipment kept there.

This company owns eight terminals at the larger cities it now serves.

Robert V. Hardie testified that he has a terminal at Los Angeles; has five large trucks, two small ones and one trailer; that he has made arrangements for all necessary additional equipment and a terminal in Owens Valley; that he has had experience in long distance hauling (contract) and under certificate as a distributor of beverages in Southern California.

In support of this, J. E. Armstrong, a truck salesman, testified he had already sold Hardie five trucks and had Hardie's order for three additional. Also, Norman Mack of Los Angeles, testified that he had in the past, and would in the future, finance Hardie's truck needs. E. W. Melton, Secretary of Sierra Club Beverage Company of Glendale, testified as to the efficiency of Hardie's service for the previous four years.

Applicant Fredericks did not testify, but Harvey Baisch testified that he is financial manager for Fredericks in the operation of interstate truck service between Los Angeles and Phoenix, Arizona. Fredericks owns two trucks, which are leased to the interstate operator. Also, Guy S. Smith testified he had investigated Owens Valley shipping needs for Fredericks and found that daily service is needed and that a volume of five tons daily will sustain such an operation.

Southern Pacific passenger service carries Railway Express Agency business on trains Nos. 88 and 89, which is transferred at Owenyo to the narrow-gauge for points north. This express must leave Los Angeles at 11:00 p.m. and will be received at the depot as late as 10:30 p.m. It arrives at Owenyo at 9:00 a.m. at Laws (Bishop) at 12:20 p.m. the day following. Reverse movement leaves Laws at 1:30 p.m., Owenyo at 9:50 p.m. and reaches Los Angeles at 7:40 a.m. This service also carries standard sleeper between Los Angeles and Owenyo.

Exhibits filed by Southern Pacific show that the per mile expense of operating these trains is 86.86 cents. The revenue is 79 cents per mile on Train No. 88 (southbound), and 95 cents on Train No. 89 (southbound),--an average of 87 cents. Another exhibit (No. 14) of Southern Pacific shows that the gross revenues of the trains decreased gradually from \$115,705 in 1925, to \$73,144 (approximately) in 1928. Exhibit No. 15 for the first seven months of 1928 shows earnings of 78 cents per mile, of which express earned 12 cents on northbound, and 64 cents on southbound, of which express earned 6 cents. These exhibits were urged as evidence of the peril to continuance of the entire passenger train service between Mojave and Owenyo, due to any further deflection of express business. It was, further, the estimate of R. E. Scruggs, in charge of Owens Valley points for Railway Express Agency, that it is expected California Transit express service, recently established, will cause a further deflection of 20 per cent of revenue.

Protestant, California Transit Company, operates one passenger schedule daily, each way, between Los Angeles and Bishop, and the stages have express compartments limited to packages of 100 pounds or less. This is morning-to-evening service northbound, reaching Lone Pine at 5:10 p.m.; Independence at 5:30 p.m., Big Pine at 6:45 p.m. and Bishop at 7:15 p.m. In the reverse service from these points, reaches Los Angeles at 5:05 p.m. In addition, local daily service is established, leaving Lone Pine (with passengers and mail from Owenyo) at 9:20 a.m., and reaching Bishop at 11:40 a.m. In the reverse, the stage leaves Bishop at 6:15 p.m., reaching Lone Pine at 8:55, and Owenyo at 9:30 p.m. The schedules are to and from Southern Pacific trains. This local service includes freight rights, and a truck and trailer is used when necessary.

P. W. Barnard, Assistant to the General Manager of the Southern Pacific, testified that freight is accepted at Los Angeles until 4:00 p.m. daily (except Friday and Sunday) leaving Los Angeles at 8:15 p.m. and reaching Mojave at an early hour the following day; that Lone Pine shipments are ready for delivery at 7:00 a.m. at Owenyo the next day; that transfer to the narrow gauge is accomplished at 6:30 a.m. (average); that freight is available at Bishop at 2:00 p.m. (second day); also, that a special car is made up at Mojave for transfer at Owenyo to points north. No testimony was given as to the volume or earnings of this freight service. The elapsed time on freight is two days after reception at Los Angeles.

Of the carriers now authorized to transport freight and express between rail points and communities two were witnesses. V. G. Smith operates between Zurich (rail) and Big Pine, a distance of 2½ miles. This community has about 800 population and is the active center of an agricultural region. Smith testified that his volume of freight and express has been decreasing gradually since 1925; that in 1927 his gross receipts were only \$583.24, while for the first five months of 1928 his receipts were less than \$200.00. He said the express and freight from Los Angeles are now moving by trucks. Similar testimony was given by A. W. Hess, operating between Laws and Bishop (five miles). His exhibit (No. 6) shows 901,672 pounds transported in the first five months of 1927, and revenue thereon of \$1831.00, while in the same period for 1928 the volume was 523,731 pounds, and revenue \$1021.00. Hess testified more trucks brought cargo to Bishop in 1928 than in 1927. The testimony of these witnesses indicates that the rail losses have resulted from existing truck operations rather than declining business in the valley.

During the hearings at Bishop, Independence and Los Angeles 84 witnesses were examined. Of these, 28 were produced by Hardie, 24 by Duntley, 8 by Fredericks and 2 by all applicants. Protestants produced 20 witnesses in behalf of Southern Pacific and American Railway Express (now Railway Express Agency, Inc.), combined, and two by California Transit Company. Of the total number, 68 were actual shippers, 55 being produced by applicants, 13 by protestants, of whom seven were from Owens Valley points. The remainder were operating and statistical witnesses of applicants and protestants. As it took 12 days to produce this record, it appears unnecessary to relate in detail the expression of individual witnesses. The record shows that those who are actual shippers are representatives of the mercantile and industrial elements in Owens Valley and the wholesalers, manufacturers and jobbers of Los Angeles, and that they compose a very substantial portion of these elements.

In general, applicants' witnesses in Owens Valley testify to these needs: A reliable regulated truck service to and from Los Angeles on a 24-hour basis and at reasonable rates; that they prefer direct delivery at store-door by auto carrier than rail transfer and rehandling; that they have used so-called "contract" service by trucks, but that only in one or two cases were there actual contracts, the business being conducted by the "contractors" upon rate schedules similar to other carriers. A majority want both truck and rail services; a very few expressed indifference as to rail service. They also, in the main, asserted that the valley towns are recovering from the depression due to the Watterson failure, and that commerce, agriculture and tourist businesses were greatly improved in 1928, and are gradually expanding. In general, the rates proposed by applicants were regarded as reasonable.

Witnesses of protestant rail interests in Owens Valley communities represented five business men of Bishop and two at Lone Pine and Independence. Their attitude was that business is at low ebb in the valley, that rail service is adequate and reasonably prompt, and that the establishment of truck service may impair and, possibly, destroy the rail service. Among witnesses presented by the rail interests were the operators of truck lines between rail points and the communities. Each testified to a gradually lessening volume of freight at the rail points. This appears significant when compared with the showing of large tonnage, estimated from 30 to 125 tons weekly, that moves to valley communities by the "contract" carriers, mostly from Los Angeles.

The Los Angeles shipper-witnesses were large distributors, mainly. Those for applicants urged regulated dependable truck service at fixed rates and responsibility as to C.O.D. collections. Those for the rail lines expressed satisfaction with the rail services, especially express.

A careful review of the testimony of shipper-witnesses is convincing that a need for adequate truck service exists. The record is replete with admissions of use of the "contract" services available, three of which were the Heaton, Mahurin and B. & L. trucks, one making almost daily trips. Protestants urge that these carriers are not illegal and appear sufficient for the need that may exist, and hence no need exists for a certificated carrier. The more plausible explanation (one voiced several times by witnesses) is that truck service was so badly needed that patronage was bestowed on those who offered it, regardless of legal status.

In Decision No. 20264 on Application No. 12402 this Commission determined that Owens Valley points were entitled to a choice of passenger and express service (limit, 100 pounds), and a certificate was granted to California Transit Company therefor.

The demand now seems to be for automotive service for shipments of greater weight than 100 pounds. The average of railway express shipments is far below 100 pounds and a deflection of business therefrom may be regarded as less important in the instant proceeding. Examination of the rates of applicants and express company shows that on perishables the applicants are lower, in the main, while on other articles of substance they are equal or higher in the smaller quantities. As no refrigerator service is now maintained, this form of transportation is not involved, except as it is offered by one applicant.

The testimony of operating witnesses for protestant carriers, as reviewed by us, presents the rail service to be as adequate and efficient as trackage, safety and geographical conditions permit. But it still remains that the best is a service limited as to speed between Mojave and Owens Valley by light rail construction; limited at Owenyo and to the north by transfer to a narrow gauge system of still lighter construction, and a routing that does not come within two miles of the communities served, each having to depend on local carrier or their individual transportation. This situation is fully known to the witnesses testifying, and it is their complaint of inadequacy that forces the conclusion that their relief may be in the direct truck service sought, though it deflect some traffic from the rails.

Under the record it is obvious that a preponderance of shippers (who pay the freight bills, as they control shipments) need freight truck service because of the following benefits:

Reduction of time from 48 hours by rail to 24 hours by truck--an overnight service.

Direct store-door delivery without rehandling.

Express service at practically l.c.l. freight rates.

Regulated responsible truck service in place of doubtful operation by unauthorized agencies.

Selection of the applicant to establish this service is necessary, as there is no need for more than one carrier. Each offers adequate service, so far as rates and schedules are concerned, the rates being based on a combination of rail class rates plus local haul. Applicant Fredericks has but two trucks (both leased), and his showing of experience and responsibility is deficient. Applicant Hardie is the prior applicant, and urges that the certificate be granted him because of his long study of Owens Valley shipping needs, his prior applications, his experience as operator of the Los Angeles-Glendale and other further services under the authority of this Commission. As to his financial ability, a witness for a truck company testified that he could make arrangements for equipment. Applicant Motor Terminal Freight Company (substituted for G. M. Duntley) now operates established certificated long distance operations, one being Los Angeles to San Luis Obispo, 214 miles; another, Los Angeles to Taft and West San Joaquin oil fields, 170 to 200 miles, and Los Angeles to Bakersfield, 130 miles. The company has a large terminal in Los Angeles, approximately 90 pieces of equipment, and a large pickup system in Los Angeles; it will require little capital investment to make it ready for service.

We believe that applicant Hardie, being the prior applicant, having shown his ability to provide adequate service during the entire year on parity with rail transportation, is entitled to receive the certificate to establish the service found to be necessary.

ROBERT V. HARDIE 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.

O R D E R

ROBERT V. HARDIE having made application for a certificate of public convenience and necessity to operate automotive truck service as a common carrier of freight between Los Angeles and Bishop, and points intermediate to Mojave and Bishop; 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 require the establishment of automotive truck freight service by ROBERT V. HARDIE between Los Angeles and Bishop, serving as intermediates all points between Mojave and Bishop; provided, that such service shall be daily (except Sundays and Holidays throughout the year); and provided, that no transportation may be conducted between Los Angeles and Mojave, or intermediates; provided further, that such service shall include free pickup or delivery one mile either side of the route traversed on all shipments; and provided further, that applicant shall conduct no local transportation between Lone Pine and Bishop or intermediates; over and along the following route:

State Highway between Los Angeles and Bishop via Mint Canyon, Mojave and Red Rock Canyon;

and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same hereby is granted ROBERT V. HARDIE, 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 it 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 and after the date hereof.

MOTOR FREIGHT TERMINAL COMPANY and J. R. FREDERICKS having made application to establish automotive transportation for freight between Los Angeles and Bishop and certain intermediates; public hearings having been held, the matters 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 services as proposed by applicants; and

IT IS HEREBY ORDERED that said applications, and each of them be, and they are hereby denied.

Dated at San Francisco, California, this 10 day of

June, 1929.

Thomas S. Lott
C. L. Harvey
Z. M. Lott
M. A. Linn
Commissioners.