

Decision No. 21484

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
W. O. FLEISCHER and HARRY E. FLEISCHER
doing business as copartners, under
the fictitious name of Los Angeles and
Oxnard Daily Express, to operate an auto-
mobile truck service for the transporta-
tion of freight and express between Los
Angeles and Oxnard and intermediate
points.

Application No. 15300

Phil Jacobson, for Applicants.

C. W. Cornell and L. B. Young
for Pacific Electric Motor
Transport Company, Interested
Party.

BY THE COMMISSION:

O P I N I O N

Applicants herein, W. O. Fleischer and Harry E. Fleisch-
er, copartners, operating under the fictitious name of Los Angeles
and Oxnard Daily Express, seek a certificate of public convenience
and necessity to reroute a part of their service between termini
via State Highway No. 60-A, extending from Santa Monica to Oxnard,
and generally known as the new Malibu road along the Pacific coast.
The certificate is sought as alternate routing and additional ser-
vice in connection with the main terminal operation.

A public hearing herein was conducted by Examiner Williams
at Oxnard.

Applicants, for many years, have been conducting, under
authority of this Commission, service between Los Angeles and Ox-
nard via Ventura Boulevard and Conejo Pass, and also via Santa
Susana Pass and Camarillo. By the present application a new

route westward from Los Angeles to Santa Monica, and thence north over the new Malibu road to Oxnard, serving intermediately all points north of the city limits of Santa Monica, is sought.

By amendment at the time of hearing, applicants also asked leave to serve certain points south and west of Oxnard several miles distant from the main highway. As to the points north of Santa Monica and the additional points sought by amendment, there is no other public carrier, and no protest was made by the Pacific Electric Motor Transport Company, as it does not serve, even remotely, any points sought.

Applicants seek all intermediate points between Santa Monica and Oxnard on the new Malibu road, and offer to give daily service of one schedule in each direction, this schedule being provided to make early morning delivery at all points. The distance from the northern limits of Santa Monica to Oxnard by this route is approximately 30 miles. The highway was opened for public travel in June, 1929, having been under construction for several years previous. It follows the shore line very closely and its general use as a through route was anticipated by the construction of several hundred dwellings along the shore and near by, together with the development of several beach sites and incidental business between the north line of Santa Monica and Point Mugu. There are probably 1500 people within a distance of 25 miles, but the building activity and development is now quite extensive, and is expected to be for the next two or three years, particularly at Malibu Beach, Duma Beach and Trancas Beach.

According to the testimony of W. J. Greer, operating the Olas Grandes Inn north of Santa Monica, there is need for a truck service from Los Angeles to these points, not only for his own business, but for the business of others. Mr. Greer is the mercantile concessionaire of the Rindge Estate, which controls 23 miles of property frontage along the beach, and he conducts all

of the businesses in that distance except at Trancas Beach, or through his sub-concessionaires. Mr. Greer testified that the building now in progress, which is scattered along practically this entire distance, requires constant supplies from Los Angeles in the way of building material and hardware, as well as articles of subsistence for those who have homes or week-end places, particularly Malibu Ranch headquarters, and that several lines of development are planned which may require considerable movement of less than truck-load shipments.

Harry E. Fleischer, one of the applicants herein, testified that he had called on every business house north of Santa Monica and had received information at each place that a truck service is needed and will be used. As the hearing was held during the week-end, he testified that most of the business men could not absent themselves from their business to give testimony. Mr. Fleischer also testified that he had talked to many other shippers from Los Angeles who are now soliciting business along the new road and will require truck service, as their delivery systems do not extend north of Santa Monica.

It appears from this showing that the purpose of applicants is to extend their service between terminals to include the volume of business that may be offered over the new route, and that it will be a public convenience for them to do so.

The points sought in the amendment to the application include points west of Point Mugu along the Hueneme road, closely paralleling the beach and divergent at Point Mugu from the main road connecting with Ventura Boulevard. The points are Hueneme, Silver Strand, Hollywood by the Sea, Hollywood Beach and Mandalay Beach. These points are now served, according to the testimony of W. O. Fleischer, from Oxnard via private truck, or consignees call for their deliveries at the Oxnard terminal of applicants.

It is the desire of applicants to blanket these points under the Oxnard terminal rate and in this way save the additional cost to the consignees. This was supported by the testimony of E. O. Green, Cashier of the Bank of Hueneme, and R. M. Moore, general store at Hollywood Beach, and Jack Miller, Secretary of the Oxnard Chamber of Commerce with which the communities are affiliated through local Chambers. There are approximately 40 business concerns and about 1500 permanent residences at the points named. Applicants propose to serve these points either by direct delivery or diversion of the main route sought herein, or by free delivery from the Oxnard terminus.

It appears from the record herein that applicants are expanding their business between terminals to fit public convenience and with some assurance that the business will be patronized. It is the testimony of Mr. Harry E. Fleischer that the volume of traffic in sight for the proposed new operation is not sufficient to expect more than a recovery of out-of-pocket cost, but that applicants consider it their duty to furnish the service and are amply able to maintain it. Mr. Fleischer expects this service to become profitable in time. In addition, the applicants confer a distinct rate benefit on the communities of Hueneme and other points south of Oxnard by making free delivery instead of requiring pick-up or private hauling from the terminal at Oxnard, which Mr. Moore testified often costs more than applicants' rate between Los Angeles and Oxnard. The business is largely packages of 500 pounds or less, and almost wholly fourth class.

We believe the record justifies the establishment of the service by the new route and as an extension and enlargement of applicants' existing service, and we hereby find as a fact that public convenience and necessity require the same. An order granting the certificate will be entered.

W. O. Fleischer and Harry E. Fleischer, doing business as copartners, under the fictitious name of Los Angeles and Oxnard Daily Express, 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 aspects, 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

W. O. FLEISCHER and HARRY E. FLEISCHER, copartners, operating under the fictitious name of Los Angeles and Oxnard Daily Express under authority of Decision No. 5962 on Application No. 3268 and Decision No. 7416 on Application No. 4448, having made application, as amended, to extend and enlarge their service by rerouting a portion of it via Santa Monica and State Highway No. 60-A between termini and serving all intermediates, including, by diversion, Hueneme, Silver Strand, Hollywood by the Sea, Hollywood Beach and Mandalay Beach, and all other points intermediate between Hueneme and Oxnard via Hueneme Road, Ocean Drive and Fifth Street; 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 that an enlargement and extension by applicants of their service between Los Angeles and Oxnard by the operation thereof via Santa Monica and the State Highway No. 60-A, otherwise known as the New Malibu Road, over and along the following route:

Commencing at Third and Central Avenue in Los Angeles, thence via Sunset and Santa Monica Boulevards to Santa Monica, thence via Los Angeles and Ventura Coast highway, No. 60-A to Oxnard. For service to Silver Strand, Hueneme, Hollywood-by-the-Sea, Hollywood Beach and Mandalay Beach, the route branches off where Coast highway No. 60-A crosses Hueneme road, thence westerly along Hueneme road to its junction with Ocean Drive, thence northwesterly along Ocean Drive through Silver Strand, Hollywood-by-the-Sea, Hollywood Beach, Hueneme and Mandalay Beach to Fifth Street, thence east along Fifth Street to the terminal in Oxnard; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same hereby is granted as an addition, extension and enlargement of applicants' present operative rights, and not in lieu of any thereof, subject to the following conditions:

- 1.-Applicants shall file their written acceptance of the right herein granted as an extension and enlargement of their present certificate, and not as a new or separate grant, within a period of not to exceed ten (10) days from the date hereof.
- 2.-Applicants 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 thirty (30) 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 applicants herein unless such vehicle is owned by said applicants or is leased by them 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 23rd day of August, 1929.

Thos. S. Leland
C. Seavey
Ernest L. ...
Leon ...
W. A. ...
Commissioners.