

Decision No. 21495

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
GEORGE HARM

ORIGINAL

to extend his automobile freight and express line, operated from Fresno via Lemoore to Stratford and Kettleman Hills (Kettleman City) and to connect and coordinate said freight and express line as extended, with the Western Truck Line, now operated by applicant between Fresno, Hanford, Lemoore and intermediate points.

Application No. 15850

- G. L. Aynesworth, for Applicant.
- W. S. Johnson, for Southern Pacific Company, Protestant.
- W. S. Johnson and E. L. McConnel, for Valley and Coast Transit Company, Protestant.

BY THE COMMISSION:

O P I N I O N

Applicant herein seeks the extension of a freight and express line owned by him, between Fresno and Stratford (via Lemoore) to Kettleman Hills, and also to "connect and coordinate" said freight and express line, as extended, with another line operated by applicant between Fresno and Lemoore, via Hanford. The line sought to be extended recently was acquired by applicant from B. L. Hiron under Decision No. 21402 on Application No. 15806.

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

The line sought to be extended was originally established by McConnell Hiron under Decision No. 17551 on Application No. 12584

and authorizes transportation of freight between Fresno and Stratford, and from Lemoore to Stratford, but no other intermediate points over a route sought from Fresno via Elm Avenue to Hub, thence by county highway to Lemoore, and thence by county highway to Stratford. In effect, the line serves only Stratford and is privileged to pick up consignments only at Fresno and Lemoore for delivery at Stratford. No service may be given between Fresno and Lemoore, as this service is performed by applicant's route via Hanford. It is the consolidation of these two routes that applicant intends by his application. Applicant, however, failed to prove any need of consolidation and introduced no proof that anybody at Lemoore required additional service or at any intermediate point. Such consolidation cannot be granted merely upon the operator's desire to coordinate his work and admit economies in the operation of his lines. In the acquisition of this particular line, under Decision No. 21402, no request was made for consolidation, and yet this application was made in July, 1929. In the absence of showing as to the need of consolidation, this portion of the application must be denied.

As to the extension of service from Stratford to Kettleman Hills, a different situation prevails. There is now no established freight service to the Kettleman Hills region, and applicant is the nearest authorized truck operator to the field. The Southern Pacific Company has a terminus of one of its branch lines at Stratford and another at Huron, the former being about 19 miles from Kettleman Hills and the latter approximately 12 miles. While the Southern Pacific Company opposed the granting of this additional certificate, it made no offer to extend either of its services by rail to Kettleman Hills.

Applicant supported this portion of his application by the testimony of H. A. Rose, District Manager of the San Joaquin

Valley Transportation Company; E. J. Farrell, Manager of Chanslor-Lyon Company at Fresno; A. E. Schroer, Manager of Terminal Warehouse Company, Fresno; Dudley N. Carlsen, Manager of Benham Ice Cream Company; Harry Crane, wholesale plumbers' supplies and piping, and by stipulation, witnesses testifying for Glasser Bros., wholesale tobaccos; Haas Bros., wholesale grocers; Firestone Tire and Rubber Agency; W. P. Fuller Company; San Joaquin Light and Power Company, and Wellman-Peck Grocery Company, all of Fresno. Their testimony was uniformly to the effect that they had active accounts at Kettleman Hills and shipped almost daily, consignments up to 500 pounds to their customers, and that the establishment of a service, as proposed by applicant, would be of great benefit to them. Also, applicant presented a petition (Exhibit No. 1) signed by storekeepers and others at Kettleman Hills, particularly in Kettleman City, asking for the establishment of this service by applicant.

In addition, applicant testified that there are now 30 wells operating at Kettleman Hills and 15 companies are conducting explorations. No accurate attempt at the population of the cities of Kettleman City, Avenal or Milham City was presented, but there appear to be more than 1,000 employees in the field. Mr. Harm further testified that he had received many demands for transportation to Kettleman City from Fresno, had several times hauled truck loads under private arrangements, and that he estimated approximately a ton a day of less than carload shipments moving from Fresno to Kettleman Hills. The service to be conducted must be conducted over an unpaved desert road until such time as Kings County shall establish an improved highway.

We believe the showing made by applicant for this extension is sufficient to justify granting the application as an extension and enlargement of the certificate recently acquired by

him from Hiron, as the testimony shows that the Kettleman Hills region is active in oil development and promises to be for probably a year to come, and is purchasing largely of materials and subsistence in the Fresno market.

The application was not seriously opposed by Southern Pacific Company except as to the consolidation by which Lemoore would be served directly from Fresno, and as this has been disposed of negatively, the opposition of the Southern Pacific to the remainder of the extension is without effect, as no testimony was introduced along this line by protestant. The application was also protested by E. L. McConnel, owner of the Valley and Coast Transit Company, a corporation, of San Luis Obispo. Mr. McConnel based his opposition on the ground that he possesses a certificate authorizing service in the San Joaquin Valley between practically all points between Fresno and Bakersfield, including transportation of freight between Fresno and Kettleman Hills. The protest of this carrier, however, cannot have any effect in this proceeding as it is prohibited by Decision No. 19651 on Application No. 12258, dated April 21, 1928, from conducting any scheduled service between points, and is limited only to an "on call" or "demand" service of 5,000 pounds or more. It appears under the terms of this certificate that applicant could not perform the service proposed by him or by applicant without additional certificate rights from this Commission, and no application therefor has been made by it to the Commission. For this reason this protest will be denied.

Applicant proposes service on Mondays, Wednesdays, and Fridays, as shown by his Exhibit "A" attached to the application, and at the rates proposed by his Exhibit "B." Some of the witnesses indicated that daily service was required by them. Applicant stipulated that if the lines were consolidated as requested, he would

give a daily service. As consolidation is not proper under the record, the certificate will provide for service, as proposed, three times weekly, and the applicant will be authorized to add such service as may be necessary to adequately serve the additional territory.

We, therefore, find on the record as above recited that public convenience and necessity require the extension of applicant's line from Stratford to Kettleman Hills, subject to the same restrictions now imposed upon this operation as between Fresno and Lemoore. An order accordingly will be entered.

Applicant, George Harn, 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.

ORDER

GEORGE HARM having made application to establish automotive freight service between Stratford and Kettleman Hills as an extension and enlargement of the service now maintained by him under Decision No. 21402 on Application No. 15806, dated July 29, 1929; 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 extension of applicant's service from Stratford to Kettleman Hills, including the communities of Kettleman City, Avenal and Milham City and all intermediates, for the transportation of freight originating

at Fresno, Lemoore and Stratford only, and no other intermediates between Fresno and Stratford. Said service to be not less than three times weekly as proposed over and along the following route:

Via Desert Highway between termini;

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:

- 1.- That applicant herein shall file his written acceptance of the certificate herein granted as an extension and enlargement of his present operative rights under the decision, as aforesaid, No. 21402 on Application No. 15806, and not as a new or separate right, 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 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 applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that in all other respects the application herein be, and the same hereby is, denied.

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 30th day of August, 1929.

David Louis

A. C. Seaver

Samuel A. Cook

Leon Whitehall

W. P. Carr

Commissioners.