

Decision No. 21760

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 C. H. PENNOYER for certificate of  
 public convenience and necessity to  
 operate auto freight truck service  
 between San Diego, Lakeview, Flynn  
 Springs, Alpine, Descanso, Guatay,  
 Pine Valley, Laguna Junction and Resort  
 and intermediate points, and between  
 La Mesa and El Cajon and the above  
 named points. )  
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 ) Application  
 ) No. 15920  
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- C. H. Pennoyer, in propria persona, Applicant.
- H. J. Bischoff, for Oppenheimer Truck Line, Protestant.
- H. S. Dixon, for San Diego Electric Railway Company,  
 Interested party.

BY THE COMMISSION -

O P I N I O N

C. H. Pennoyer has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by him of an automobile truck line as a common carrier of freight between San Diego, Lakeview, Flynn Springs, Alpine, Descanso, Guatay, Pine Valley, Laguna Junction and Resort and intermediate points, and between La Mesa and El Cajon and the above mentioned points.

A public hearing on this application was conducted by Examiner Handford at San Diego, the matter was duly submitted and is now ready for decision.

Applicant, who is now engaged in the transportation of express between San Diego, Descanso, Laguna Junction and Resort, and intermediate points, desire to transport merchandise in larger quantities than now authorized and to thus meet the alleged demand on the part of his patrons for such service. Applicant proposes to furnish a freight truck service three days a week (Monday, Wednesday and Friday) between San Diego and

Lakeview, Flynn Springs, Alpine, Descanso, Guatay and Pine Valley, and intermediate points, Lakeview to Pine Valley, inclusive, and between La Mesa and El Cajon and Lakeview, Flynn Springs, Alpine, Descanso, Guatay and Pine Valley and intermediate points, said service to alternate with the present tri-weekly service of the Oppenheimer Truck Line now operated on Tuesday, Thursday and Saturday. Applicant does not propose service between San Diego and Lakeview or points intermediate.

Applicant also proposes to furnish a daily service between San Diego, Laguna Junction and Resort and all intermediate points, there being no present service other than applicant's present service on express. Service to and from Resort is to be seasonal and to be operated between May 16th and October 15th, inclusive, of each year.

The proposed rates and time schedules are shown on exhibits as attached to and forming a part of the application. The equipment proposed to be used consists of 1 two ton Moreland Truck, 1 one-ton Hudson and 1 one-half ton Ford truck.

C. E. Pennoyer, applicant herein, testified regarding the details of his proposed operation and stated that requests had been made for the establishment of the proposed augmented service.

A. L. Cutler, operating a general store at Pine Valley, and postmaster at that community, testified that the freight service proposed by applicant was needed by his community, that he rarely saw the trucks of the Oppenheimer Truck Line.

F. E. Hill, operating a garage at Alpine, endorses the proposed service for the reason that a daily service would then be possible for his requirements. This witness has used the service of protestant, Oppenheimer Truck Line, and has no complaint other than the proposal of the applicant, if granted, would enable a daily service to and from his place of business.

Rush Oppenheimer, proprietor of Oppenheimer's Truck Line, protests the granting of the application insofar as it proposes to duplicate service now rendered by protestant between San Diego and Pine Valley and intermediate points. This protestant operates service tri-weekly on Tuesdays, Thursdays and Saturdays, using a fleet of 5 trucks and 1 trailer with a total capacity (manufacturer's rating) of 15 tons. This witness states that the volume of business transported over his route between San Diego and Pine Valley does not justify the establishment of a daily service and that his trucks, now operating tri-weekly, have space available for additional tonnage. The witness also states that the volume of business which should accrue to his line is being reduced by the applicant accepting shipments, weighing in excess of 100 pounds, which protestant claims is contrary to the limitations contained in applicant's certificated authority. A petition was presented in evidence, signed by 15 patrons of the protestant Oppenheimer Truck Line, certifying to their satisfaction with the present service and their belief that the volume of traffic available does not justify the establishment of an additional truck line duplicating the present freight service.

The operative rights, under which service is now performed by applicant, are restricted regarding the carriage of express by the condition contained in this Commission's Decision No.14799 on Application No.10666, as decided April 15, 1925, as follows:

"II. Applicant shall carry express matter only on his passenger vehicles, and in such manner, or in compartments, that it will not interfere with or discommode passengers, and only consignments not exceeding one hundred (100) pounds in weight."

By the provisions of Decision No.20027 on Application No.14636, applicant was authorized to discontinue his passenger service between San Diego and Laguna Junction and intermediate points, thereby eliminating the portion of the restriction referring to the carriage of express on passenger vehicles, and

by the provisions of Decision No.1501 on Application No.11162, as decided June 25, 1925, applicant was authorized to establish a service for the transportation of passengers and express"between Descanso and a point on the northerly line of Lake Cuyamaca about five miles northeast of Julian, commonly known as the end of Road District No.4, and intermediate points via Oakzanita and Green Valley," the express right thereby conferred being subject to the following conditions:

- "2. That the restrictions as to the weight of packages to be transported under authority of Decision No.14799, shall prevail in the service to be established by the Commission's order herein."

From the record herein and by the testimony of the applicant and other witnesses, it is apparent that applicant has transported consignments weighing in excess of one hundred pounds, for which no authority has been granted. Applicant contended at the hearing that he had construed the restriction in the Commission's decisions to permit him to transport express packages not exceeding a weight of one hundred pounds per package. This contention is erroneous and is not the proper construction to be placed upon the conditions previously stated in the decision, in fact, the application herein in setting forth the reason upon which applicant relies for the granting of the desired certificate contains the following statement:

"Applicant is now engaged in auto truck transportation service handling express not to exceed 100 pounds per shipment between San Diego, Descanso, Laguna Junction and Resort and intermediate points, per tariff on file with the Railroad Commission."

From the record herein we are of the opinion and hereby find as a fact that applicant has presented no evidence justifying the granting of the application, excepting as to shipments destined to Laguna Junction and points intermediate between Laguna Junction and Resort, both points inclusive, when such shipments originate at or may be destined to San Diego, there

being no other carrier serving such points without the necessity for transfer of shipments to other carriers enroute.

C.H. Pennoyer 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 may be given.

#### O R D E R

A public hearing having been held on the above entitled application, the matter having been duly submitted, the Commission being now fully advised and basing its order on the finding of fact as appearing in the opinion which precedes this order,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by C.H. Pennoyer of an automobile truck service as a common carrier of freight for through shipments between San Diego and the territory between Laguna Junction and Resort, both inclusive, no local shipments of freight to be carried between San Diego and any points intermediate to said Laguna Junction or intermediate between communities between said San Diego and Laguna Junction; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same hereby is granted to C.H. Pennoyer for the transportation of freight as a common

carrier between San Diego and the territory between Laguna Junction and Resort, both inclusive; provided that no local shipments of freight are to be transported between San Diego and any point intermediate to said Laguna Junction, or intermediate between communities between San Diego and Laguna Junction, and subject to the following conditions:

1- The authority hereby conveyed is for additional service in connection with applicant's presently authorized operative rights, and is for seasonal operation from May 16th to October 15th, both dates inclusive, of each year. This order shall not be construed as authority to in any way alter restrictions heretofore imposed on applicant's existing operation.

2- Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.

3- 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 thirty (30) days from the date hereof.

4- 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.

5- 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 ORDERED that as to all other matters, this application be and the same hereby is denied.

Dated at San Francisco, California, this 6th day of November, 1929.

Thos D. Curtis  
Ch. Lewis  
John E. Holt  
M. J. C.  
COMMISSIONERS.