

Decision No. 21899

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 ANDERSON BROTHERS
 for certificate of convenience and
 necessity to operate freight and ex-
 press service between San Francisco,
 Oakland, Sacramento, Folsom, Placer-
 ville, Camino, Riverton, Whitehall,
 Kyburz, Fred's Place, Twin Bridges,
 Phillips, Myers, Bijou and Coleville,
 Fales, Bridgeport, Masonic, Bodie,
 Tioga Lodge, Leevining, Farrington,
 Boulder Lodge, Culver Camp and Carson
 Camp.

Application No. 15869

Maurice J. Sullivan, for Applicants.

H. E. McElroy, for Southern Pacific Company
and Virginia & Truckee Railway, Protestants.

F. E. Murphy, for Virginia & Truckee Railway,
Protestant.

Arthur B. Roehl and J. L. Fithian, for
El Dorado Transport Company, Sacramento
Auto Truck Company, and Folsom Auto Truck
Company, Protestants.

Guy S. Alexander, for High Sierras Transport
Company, Protestant.

BY THE COMMISSION:

O P I N I O N

Applicants herein seek a certificate to transport
 property originating between San Francisco and Oakland and
 California-Nevada state line and destined to points in California
 south of the California-Nevada state line near Coleville, and
 points southerly, including Bridgeport, Mono Lake, Farrington
 and Carson Camp. Applicants are residents of Nevada, having
 their headquarters at Gardnerville, and the route to be followed

between origin and destination of shipments includes a routing in the States of Nevada and California state line, near Bijou on the southeasterly shore of Lake Tahoe to Gardnerville, and thence south, reentering California at Coleville at a point near the state dividing line. This service is to be conducted only between May 1, and November 1.

Public hearings were conducted by Examiner Williams at Bridgeport and Sacramento.

Applicants, L.N. & H.G. Anderson, co-partners, conduct an extensive trucking business in the State of Nevada with headquarters at Gardnerville and Minden (one mile apart). They are now in possession of certificates from the Nevada Public Service Commission for the transportation of property between the California-Nevada state line, near Bijou and Minden, to Gardnerville and from Gardnerville to the state line near Coleville. They also have other authorized operations in Nevada not involved in this proceeding, and have prescriptive right between the state line near Coleville and Bridgeport.

By Decision No. 18,882 on Application No. 13,925 this Commission extended the prescriptive right between the California state line at Coleville, southerly to include Mono Lake and Farrington. By the present application applicants seek a through service from San Francisco Bay points and points in California,-- Coleville and south over a route through Berkeley and Richmond, crossing the Carquinez bridge, and thence by way of Vacaville and Dixon, to Sacramento, and thence east via Folsom, Placerville and Myers (a point southwest of Lake Tahoe), and thence to Bijou on the southwest shore of Lake Tahoe to the California line. Under the offer, no local business between points in California is to be undertaken and all the shipments must be destined to Coleville or points south, or originate therein.

The reasons urged for the granting of the certificate are the needs of the communities in Mono County, between Coleville and June Lake in the summer season, and for which it is alleged that there is not now adequate transportation from northern California points. To meet this alleged need, applicants propose an on-call service of one ton or more from San Francisco, Oakland and points west of Sacramento without definite schedule. From Sacramento and points west thereof, applicants propose service three days each week between May 1, and November 1, of each year, and intend to make second-day delivery at Mono County points. This Sacramento scheduled service is alleged to be needed because of the demand for fresh vegetables and subsistence required in Mono County points during the summer season.

Because applicants presented no proof as to any demand for service from points west of Sacramento, this feature of the application may be disposed of without further consideration. The only evidence presented was the desire of the applicants themselves and one or two suggestions from witnesses, but not of any character that would justify the granting of this portion of the application. Testimony in support of applicants was largely directed to the movements from Sacramento to Mono County points that largely involve perishable fruit and articles of subsistence.

Witnesses introduced by the applicants from Mono County points include George C. Delury, Jr.; President of the Mono County Chamber of Commerce; E. J. Clinton, conducting mine operations at Bodie; J. S. Cain, also of Bodie; Jacob A. Mattly, a supervisor of Mono County and residing at Leevining; A. S. Pimental, general store and garage; William B. Evans, general store and groceries, Bridgeport; Robert L. Currie, Leevining, butcher, merchandise and ranching, and Mrs. V. R. McPherson, proprietor of Mono Inn at Mono Lake. Their testimony was, generally, that they required fresh vegetables, case goods and other articles, mostly subsistence, throughout the six months covered by applicants' service, and

that frequently it was desired to transport such articles from Sacramento; that the present methods of shipment by rail from Sacramento to Reno via Sacramento and thence via Virginia & Truckee Railway to Minden, and thence by truck from Minden and Gardnerville to Mono County points, require several days and result in deterioration of the perishables in transit. Mr. Clinton and Mr. Cain testified as to the needs of the mining town of Bodie, involving shipments of machinery and other nonperishable articles used in mining, in addition to subsistence. Mr. Clinton testified that Bodie now has available service over the Southern Pacific at Thorne station in Nevada, but that the lift between this station and Bodie (6,000 feet) makes trucking a difficult and almost prohibitive process. Mr. Clinton has taken leases on several mining properties and undertaken their development, and other interests are engaged in developing old properties in Bodie and the recently moribund mining community has increased from a population of 14 to more than 100, and promises additional population when the mining work is in full swing. Mr. Currie and Mrs. McPherson ship in considerable quantities of meat and provisions for the hotels and resorts. Witnesses at Bridgeport also receive a considerable volume, mostly from Reno, and Mr. Evans admitted that a large part of his volume is now hauled by his own truck from Reno.

Applicants were supported by the Mono County Chamber of Commerce, which includes practically all of the businesses along the state highway between Coleville and Farrington. In view of the fact that Mono County is composed of approximately 2800 square miles of mountainous territory, all of elevations of more than 5,000 feet (Bodie is 8700 feet), that there is no incorporated community in the County, and that the population of 2,000 is rather widely dispersed in very small communities, the Mono County Chamber of Commerce appears to be the responsible civic body capable of acting for the population. Its resolution reads:

"And, Whereas: That as Mono County is without railroad facilities the people of this section are dependent on truck service for the transportation of its freight and express matter, and that any improvement or extension of this service is, we feel, another step in the development and advancement of this County."

Coleville, the nearest point to rail connection in Mono County, is 32 miles from Minden, the end of the Virginia & Truckee Railway Company's service. Bridgeport is 67 miles from Minden, while points in and about Mono and June Lake are from 90 to 100 miles. While the distances between some Mono points and Southern Pacific service elsewhere in Nevada may be shorter in mileage, the difference in altitude is very great. From the south, Mono County has no rail connection except by almost the same distances as from the north--with Southern Pacific at Laws (Bishop). Rail connections on the west are so remote as to be outside the pale of availability. The most available and practical pass is the one via Placerville and Lake Tahoe, and thence over the Kingsbury grade into Minden, Nevada, for transportation from points west of the Sierra range. From the south, this region is benefited by rail and truck service to Bishop for shipments from Los Angeles and points south, and nothing in the record indicates that this service has not been efficient and satisfactory. In fact, it is one of the theories of applicants that this service has become so prompt and satisfactory that shippers at Reno, Nevada, and Sacramento have been at a great disadvantage in competing in this territory, and that the establishment of service as proposed by applicants will minimize this disadvantage.

In support of this phase, applicants, at the Sacramento hearing, introduced witnesses from Sacramento supporting the application. A resolution was adopted by the Sacramento Wholesale and Manufacturers' Association, based on the theory "that this territory (Mono County) is at present without adequate rail or

truck service from Sacramento, thereby causing business to drift to other cities with better service," and urging the granting of the application. In addition, supporting testimony was given by Allen R. Johnson and W. H. Snead, representing this association.

This Commission has no authority to regulate transportation for the purpose of equalizing trade competition or giving advantage to one particular locality over another. The testimony from Sacramento possesses weight as to the necessity for a service as required by the Mono County consignees, and to that extent only will it be considered.

It is not possible to estimate from the statements of witnesses the approximate volume that would accrue to the service proposed by applicants between Sacramento and Mono County points, as the statements were extremely indefinite. Applicant, L. N. Anderson, testified that he estimated the minimum quantity at three tons weekly, and that the additional volume would be largely new business not now moving by any carrier and largely of a perishable nature, requiring prompt transportation. He also testified that many demands had been made on him for just such service as he proposes to render.

Protestants represented all the carriers now operating in California and Nevada other than applicants, El Dorado Transport Company, under certificate from this Commission, conducts a freight service between Sacramento to the California line near Bijou, via Folsom, Placerville and Lake Tahoe (Myers) and maintains daily schedules between May 1, and November 1, for all points except Folsom, which it does not serve except as a point of origin for points west of Folsom. According to the testimony of J. L. Fithian, Manager of this carrier, it has abundant facilities and ample cargo space to handle all commodities destined to Mono County points, and would deliver them to the applicants at the state line for transport over their system.

Southern Pacific Company maintains service between Sacramento and Reno, at which point shipments for Mono County are transferred to the Virginia & Truckee Railway, operating southerly through Carson City to Minden, its terminus. According to the testimony of T. Bergerson, District Freight Agent at Reno, shipments leave Sacramento daily at 6:45 p.m., arrive at Reno at 7:40 a.m., and are on the platform for delivery by 8:00 a.m. Virginia & Truckee Railway takes such shipments the same day they are delivered at Reno, to Carson City and Minden direct, reaching the latter at 12:35 Noon. Applicants transport the shipments the following day from Minden to Owens Valley points, a considerable portion of the l.c.l. shipments being transported on the passenger and express stages and the heavier shipments by truck. Mr. Bergerson testified further that he was familiar with the wholesale establishments at Reno, and that none has complained of the delay or inefficiency of the combined rail and truck service between Reno and Mono County points. He further testified that the train schedules were uniformly prompt and that no delays by rail occurred. This was in answer to testimony of applicants' witnesses, that it took three to five days to get shipments from Sacramento via Reno.

E. L. Griffiths, General Freight Agent of the Virginia & Truckee Railway, also testified that no complaints had been received by this carrier. Shipments at Reno are received up to 4:30 p.m. daily and are shipped out the next morning at 8:20, arriving at Minden at 11:00 a.m., this being a new schedule made possible by the elimination of direct service by this train to Virginia City, which is now served by gasoline motor car. Mr. Griffith also called attention to the fact that applicants now charge a rate of 90 cents per 100 pounds between Minden and Bridgeport, a distance of 67 miles, or 27 cents per truck mile, and he compared this with the offer of applicants to transport

commodities from Sacramento to Bridgeport at a rate of \$1.60 per 100, a distance of 200 miles, or 16 cents per truck mile. Mr. Griffith urged that applicants, instead of establishing a competitive service from California points should reduce their rate between Minden and Mono County points, and thus confer a large benefit on such consignees.

F. E. Murphy, Vice President, in charge of operations of Virginia & Truckee Railway, further testified that 90 per cent of the freight business of the road is to Carson City and Minden, and that there is also truck service operated by Ginnocchio Brothers, between Reno and Minden.

Guy S. Alexander, operating the High Sierras Freight Line between Bishop and Mono Lake, testified that freight is received at noon at Bishop from points south, and is immediately transported between Bishop and Mono Lake, reaching the latter point by 6:00 p.m. daily, in season.

The record in this proceeding presents aspects not usual in such matters. Mono County is isolated from all railroad contact, and is industrially active but six months of the year, the remainder being incapacitated by extreme cold weather and deep snows. In fact, during part of the year applicants conduct freight service over their route with horse-drawn sleds or wagons. The witnesses speaking for this district are not numerous, but we believe representative, and they all urged their dependence upon truck transportation. No protestant offers to extend its service to Mono County; all depend on transfers. In the summertime this region is visited by many thousands of travelers, tourists and hunters, the resorts are well filled, and the large part of the business of the residents is catering to these visitors. One of the expressed needs by all is the expeditious delivery to them of fresh produce and articles of subsistence, together with automobile parts and some other merchandise. The service proposed by applicants

seems to fit into their needs. A certificate granting applicants the right to transport property from Sacramento only to the Mono County points will, we believe, consist with the needs shown, and to that extent the application should be granted, the proof not sustaining service at intermediate points. An order accordingly will be entered.

L. N. and H. G. ANDERSON 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 to the number of rights which may be given.

O R D E R

L. N. and H. G. ANDERSON, co-partners, operating under the name of ANDERSON BROS., having made application for a certificate of public convenience and necessity to establish and conduct automobile freight service between San Francisco, Oakland, Sacramento and points intermediate to the California-Nevada State line near Bijou and Coleville and points south to Carson Camp in Mono County, 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 establishment by applicants of through automobile truck freight service between Sacramento and Coleville and points intermediate, between Coleville and Carson Camp, Mono County, inclusive, and no other service, between May 1, and November 1, inclusive, of each year; provided applicants shall not serve any points between Sacramento

and the California-Nevada state line near Bijou, over and along the following route:

Beginning at Sacramento, thence easterly over state highway via Folsom, Placerville, Myers and Bijou; thence via Kingsbury grade and Minden (Nevada) to Coleville and over Tioga-Mono Lake highway to Leeving; thence south on Bishop highway to Crestview; thence to June and Gem Lakes and Boulder Lodge, serving Bodie and Masonic by diversion over county highway eastward from near Bridgeport or near Mono Lake;

and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such a service be, and the same hereby is, granted to L. N. and H. G. ANDERSON, co-partners, subject to the following conditions:

1. Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed twenty (20) days from the date hereof.
2. Applicants shall file, in duplicate, within a period of not to exceed thirty (30) 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 on May 1, 1930.
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 19th day of

December, 1929.

Thomas D. Lott
W. J. Lott
W. J. Lott
Leon Whipple
W. J. Lott
Commissioners.