

Decision No. 22547.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of FREEMAN L. MARBLE, doing business under the name and style of AUTO CONVOY SYSTEM, for a certificate of public convenience and necessity to operate an automotive service for the transportation of motor cars by means of special equipment as a common carrier, between San Francisco and Madera and intermediate points and between Oakland and Madera and intermediate points, with branches extending from a point near Lathrop to Lodi via French Camp and Stockton; between Manteca and French Camp; from Tracy to Califa via Patterson, and Los Banos; from junction with Los Banos-Califa Highway to Dos Palos; from Merced via El Nido to junction with Los Banos-Califa Highway; between Manteca and Oakdale via Escalon; between Modesto and Oakdale via Riverbank; also between San Francisco and King City and intermediate points and between Oakland and King City and intermediate points via San Jose, with branches extending from junction of Coast and Chittenden Pass Highways to Hollister via San Juan; between Watsonville and Santa Cruz; between Castroville and Monterey; between Salinas and Monterey; and to conduct the same as a unified and consolidated system between the points herein described and all intermediate points.

ORIGINAL

Application
No. 16452.

Bacigalupi, Elkus and Salinger,
by F. B. Austin for Applicant.
Ernest Levey and E. T. Lucey for
Atchison, Topeka and Santa Fe Railway,
Interested Party.
Guy V. Shoup, J. L. Fielding and Morton G.
Smith, for Southern Pacific Railway Company,
Interested Party.
L. N. Bradshaw and J. F. Bon for Western Pacific
and Tidewater Southern Railways, Interested
Parties.
W. H. Benson and A. A. Bowman, for California
Transportation Company, Protestant.

BY THE COMMISSION:

OPINION

Freeman L. Marble has made application to the Railroad Commission for a certificate of public convenience and necessity to establish transportation via automobile for automobiles between San Francisco and Madera, Lodi, Hollister, Salinas, Watsonville and Santa Cruz and points intermediate thereto. The type of service is to be operated under the name of the Auto Convoy System and is exclusively for the delivery of automobiles from San Francisco and Oakland to the various termini and intermediate points and for back-haul of repossessed automobiles to finance companies and/or others in San Francisco and Oakland.

Public hearings herein were conducted by Examiner Williams at San Francisco, Merced, Los Banos and Watsonville. The matter was duly submitted and now is ready for decision.

The establishment of the system proposed by applicant is based upon the need for the transportation of new automobiles from the Ford assembling plant in San Francisco to the stores of various dealers east and south of San Francisco in what is known as the "Ford Drive-away Zone". The output of the Ford assembling plant is approximately 400 completed vehicles per day. Under the dealers' contracts they are required to receive the vehicles at the factory and transport them to the various places of business in whatever manner they may find best suited. Unless applicant establishes the proposed service these cars will be driven under their own power to the various agencies in this zone as they have been.

Dealers when accepting delivery have sent their own employees to San Francisco to receive the cars and drive them to the agencies or have employed a "drive-away" system which

receives the cars and drives them with its employees. This system according to the record produced at the hearing does not satisfy the dealers because of the danger of accident in traversing the highways with new cars and the frequent injury to motors that develops by careless driving.

Applicant proposes the use of vehicles on which three cars will be loaded, one upon the motive power unit and two on the semi-trailer attached to it. The overall length is 47 feet and the width 6.5 feet. The cars are so placed that they are secure for transportation. The rates to be charged for this service are based upon eight ^{cents} (\$.08) per mile per car on board or .24¢ per truck mile. According to the estimate of applicant, the total number to be thus transported, (Fords only) will be 3,835 cars, assuming that all the allotments to dealers in various places will be thus transported, which would produce a revenue of \$34,672.50, or an average of \$9.04 per car transported, based on a season of 300 days each year. Applicant proposes to begin operation with two such vehicles and to increase the number to five or more, making a total investment of approximately \$12,000 for equipment. He expects to provide storage facilities near the Ford plant where the cars will remain until full cargoes are made up. He proposes to make delivery within twenty-four (24) hours on all new cars and to return repossessed or other cars from various points within forty-eight (48) hours after demand. Applicant is experienced in the trucking and automobile business.

Applicant proposes service to twenty-eight (28) stated points and other intermediate points and at rates that produce approximately 8¢ per car for the distance to be traversed; from the same points the rates are applicable to the return movement of repossessed or other cars. While the business is based upon

the outward movement of Ford cars and the return of repossessed cars, applicant proposes to accept cars from any source for any delivery or pick-up within the territory to be served by him.

Applicant produced practically no proof as to any demand for this service in the City of Oakland and this point may be omitted from consideration for this reason. Likewise, he produced no proof as to Stockton and Lodi, the testimony showing that the boat deliveries made by the California Transportation Company at Stockton were entirely satisfactory; also no proof was made for the requirement of service at Santa Cruz and these additional points may also be omitted from consideration.

Applicant proposes to carry full cargo insurance in both directions. With the equipment provided, all of which applicant testified was satisfactory to the Motor Vehicle Department, a speed of approximately 25 miles per hour may be maintained.

Applicant was supported by the testimony of L. E. Moriarity, of Turlock; Milton Sutherland, of Atwater; Sam E. Harris, of Dos Palos; J. S. Fiske, of Patterson; John L. Seaman of Escalon; Justin Byers, of Gilroy; P. S. Nichols, of Madera; Ernest N. Rhine of Chowchilla; Joseph Gaestell of Merced; H. A. Stoe & Co., of Oakdale; Patchett & Carstensen, of Newman; C. D. Kaljian of Los Banos; E. A. Powell of King City; J. W. Getsinger of Gonzales; G. C. Gaudin of Salinas; W. W. Bendell of Watsonville; H. W. Brownell of Monterey; F. G. Tiffany of Hollister and Cunnison Bros. of Soquel. These witnesses all conduct Ford agencies at the places named and the testimony shows that they require delivery of approximately 4000 cars annually; that they believe the transportation method devised by applicant will save their vehicles from road wear, danger of accident and danger of internal injury from factory to agency, besides reducing trans-

portation charges. It also permits the flexibility of movement between agencies of such cars of different types and body colors and facilitates the business of the agencies at minimum danger. The unanimity of the testimony of these witnesses and their expression of confidence in the ability of the applicant to conduct the business in their interest is such that the necessity for the establishment of the service is manifest.

In addition to the Ford agencies named, Homer Fitzsimmons, representing the Pacific Finance Corporation of San Francisco and Oakland; Howard Thomas, credit man for the C.I.T. Company of San Francisco and Lawrence Sweeney, representing the Mercantile Finance Corporation of San Francisco, testified that each would use the service for the return of repossessed cars from points to be served by applicant. It also appears in the record that similar service with vehicles of the same type has been established elsewhere where there are Ford assembling plants and has been conducted satisfactorily to the trade.

There is no basis except that furnished by applicant for computing the probable success of the plan proposed by him, but it appears that the rates will provide profit assuming that the service is properly conducted and receives the patronage of those who have expressed confidence in it.

While a number of rail carriers participated in the hearing as interested parties, no protest was made by any. The transportation sought to be accommodated by applicant is not now a benefit to rail lines as the Ford assembling plant, after delivering the cars, makes only allowance for "drive-away" cost and not for rail transportation; nor, does it provide facilities at its plant for loading on rails.

The only protestant was the California Transportation Company, a boat line plying from San Francisco to Stockton via the San Joaquin River, and as already noted, its protest is effective in the fact that no witnesses from either Stockton or Lodi appeared to support applicant.

Careful consideration of the entire record establishes the fact that the distribution of these cars from San Francisco and the return of other cars is a public necessity or, at least, a very great convenience; that the method proposed by applicant appears feasible and that the certificate should be granted with the modification hereinbefore indicated.

Freeman L. Marble 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

Freeman L. Marble having made application for a certificate of public convenience and necessity to establish and operate automotive service for the transportation of automobiles as a common carrier between San Francisco and Oakland and various termini, 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 necessity and convenience require the establishment by applicant of an automotive service for the transportation of automobiles herein between San Francisco and termini over and along the following routes:

(a) Between San Francisco and Madera, via the San Francisco Bay Toll Bridge, and Dublin Canyon Route, serving said termini and all intermediate points, including Tracy, Manteca, Modesto, Turlock, Atwater, Merced and Chowchilla; with branches therefrom as follows:

- (1) From Tracy southerly via Westley, Patterson, Crow's Landing and Newman to the junction of the Pacheco Pass Highway and thence easterly via Los Banos to junction of the main San Joaquin Valley Highway at Califa;
- (2) Extending southerly from a junction with the Los Banos-Califa Highway at a point approximately twelve (12) miles east of Los Banos to Dos Palos;
- (3) Extending southerly from Merced via El Nido a distance of approximately twelve (12) miles to the junction of the Los Banos-Califa Highway, situated approximately eleven (11) miles west of Califa;
- (4) Between Manteca and Oakdale via Escalon;
- (5) Between Modesto and Oakdale via Riverbank;

(b) Between San Francisco and King City, serving all intermediate points, including Santa Clara, San Jose, Morgan Hill, Gilroy, Watsonville, Salinas and Gonzales; with branches therefrom as follows:

- (1) From the junction of the Coast and Chittenden Pass Highways approximately seven (7) miles south of Gilroy to Hollister via San Juan;
- (2) Between Castroville and Monterey;
- (3) Between Salinas and Monterey;

Said routes and service to be operated as a united and consolidated system between all of the points and over all of the routes, both main and branch 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) 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 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 the application so far as it proposes service from or to Oakland, French Camp, Stockton, Lodi or Santa Cruz 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. *to*

Dated at San Francisco, California, this 18 day of June, 1930.

C. C. Seaver

Ernest A. ...

W. S. ...

Commissioners.