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Decision No. 942210.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application
of J. W. SILVA for certificate of
public convenience and necessity
to operate freight and express
service as a common carrier be-
tween Salinas and San Francisco.

ORIGINAL

Application No. 15858.

Ervin S. Best for Applicant.

Gwyn H. Baker, for Highway Transport Co.,
Protestant.

W. S. Johnson, for Southern Pacific Company,
Protestant.

Edward Stern, for Railway Express Agency, Inc.,
Protestant.

BY THE COMMISSION:

O P I N I O N

J. W. Silva 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 and express between Salinas and with a radius of twelve miles thereof, and San Francisco, including the right to deliver only on the north-bound trips freight and express at the following intermediate points, to-wit: San Jose, Mt. View and Oakland.

Public hearings on this application were conducted before Examiner Satterwhite at Salinas and San Francisco, the matter was submitted and is now ready for decision.

Applicant proposes to charge rates in accordance with Exhibit "A" attached to said application and to operate on a time schedule over and along the route as shown in Exhibit "B" attached to said application and to use the equipment described in Exhibit "C".

Southern Pacific Company, Railway Express Agency, Inc. and Highway Transport Company protested the granting of this application.

Many merchants, business men and shippers at Salinas testified to the public necessity of the proposed service of applicant. The evidence shows that wholesale and retail merchants and jobbers of San Francisco ship daily a very large tonnage of goods, wares and merchandise to Salinas and to the area or district within the twelve mile radius sought to be served by applicant.

Many produce shippers and vegetable growers within this territory ship throughout the year to San Francisco, San Jose, Oakland and Mt. View a large tonnage of all kinds of vegetables and produce as well as berries.

The Highway Transport Company, protestant, it appears, has never served any of this territory outside of Salinas and its public transportation service has been confined almost wholly within the City limits of Salinas as an intermediate point on its south-bound route to Monterey from San Francisco. The applicant has for several years operated a general trucking business in and about Salinas serving various merchants, farmers and produce jobbers within the proposed twelve mile limit. These operations have from time to time extended to San Francisco, involving the transportation of produce, vegetables and

canned goods to San Francisco and the hauling of merchandise back to Salinas and its environs.

The record shows that the trucking business of applicant developed to a point where about a year ago his hauling services to San Francisco necessitated almost daily trips. It clearly appears by the testimony of many merchants and shippers that the increased patronage and trucking services of applicant between San Francisco and Salinas arose not from any particular solicitation on the part of applicant, but was the result primarily of a pronounced and wide-spread dissatisfaction with the unsatisfactory tri-weekly service of the protesting truck line.

Applicant at the time of the filing of these proceedings had entered into about 40 written private contracts during the past year with many of these dissatisfied merchants and shippers, and was meeting their transportation needs between San Francisco and Salinas, when he was enjoined by a civil action instituted by Highway Transport Company in Monterey County from carrying on such services as a common carrier.

The testimony of numerous witnesses in this proceeding is replete with complaints and criticisms of the service of the Highway Transport Company, together with many reasons why they desire and have used for more than a year last past the transportation services of applicant between San Francisco and Salinas.

These numerous complaints are based upon the failure of the Highway Transport Company to meet a long standing need and demand of the merchants and shippers at Salinas for a daily service in the place and stead of its tri-weekly service which

daily service was only recently inaugurated by the protesting truck line about the time applicant instituted this proceeding.

It was shown by applicant that the dissatisfaction with the service of the Highway Transport Company has been so pronounced that about sixty-five per cent of the merchants and shippers at Salinas have organized privately among themselves what is now known as the Merchants and Shippers Association. This association of merchants is now transporting daily between San Francisco and Salinas a large volume of freight necessary to the business needs of its members and the record shows that this organization of merchants will continue to be maintained and utilized by its entire membership unless the applicant is granted the authority to operate the service which he seeks in this proceeding. The record clearly indicates that the shipments of merchants from San Francisco to Salinas have been subjected to frequent delays for a long period of time by reason of the fact that orders for freight placed with the Highway Transport Company at San Francisco prior to its recently inaugurated daily service had to be made not later than 2:00 p.m. in order to insure delivery the following day. Also numerous complaints as to late deliveries at Salinas were made by many witnesses. The evidence further shows that the merchants and produce shippers at Salinas, in order to meet business demands and conditions, are compelled to order a considerable volume of daily shipments, including rush or emergency orders, in the late afternoon between 3:00 p.m. and 5:00 p.m., oftentimes later, which shipments have been heretofore transported by applicant under private contract. By reason of the fact that the Highway Transport Company only

picks up freight at Salinas for San Francisco on its south-bound schedule not later than 12:00 Noon, many shippers at the hearing expressed a desire for the proposed service of applicant on the basis that they would be afforded the advantages and facilities of a terminal service at Salinas.

The Secretary of the Chamber of Commerce of Salinas appeared at the hearing and testified that a resolution had been unanimously passed by this organization requesting and urging that the proposed service of applicant be authorized.

Highway Transport Company called in support of its protest several merchants at Salinas who have heretofore patronized its service, all of whom testified to the effect that the protestant's service had been satisfactory and that its recently inaugurated daily service had proved a considerable convenience to them.

The Railway Express Agency, Inc. offered no evidence in support of its protest.

Mr. L. Kocher, appearing in behalf of the Southern Pacific Company, testified that this rail carrier operates a daily service, except Sundays, from San Francisco to Salinas and that all L.C.L. freight offered at San Francisco up to 4:00 p.m. at its depot is placed in a straight Salinas set-out car, and leaves that point in a freight train known as the Los Angeles merchandise train. This train sets a car out at Salinas at about 9:00 a.m. and freight is available at the Salinas depot about 9:30 a.m. This carrier operates no pick-up or delivery service either at Salinas or San Francisco and all deliveries are made by local draymen employed by the merchants and shippers,

deliveries being made in the late forenoon.

After a careful consideration of all the evidence in this proceeding, we are of the opinion and find as a fact that public convenience and necessity require the service of applicant and that a certificate should be granted.

J. W. Silva 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

Public hearing having been held in the above entitled proceeding, the matter having been submitted, and being now ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by J. W. Silva of an automobile truck line as a common carrier of freight between San Francisco and the points on the highways in the territory and over the routes in the vicinity of Salinas, which routes are described as follows:

- (a) Beginning at a point in the U.S. Highway No. 101 northeasterly of Salinas where such U.S. Highway intersects the northeasterly boundary of Monterey County, thence southwesterly along such highway, to a point formed by the intersection of said U.S. Highway with the Salinas-Monterey Highway in the City of Salinas, continuing southerly along the Salinas-Monterey Highway to a point formed by the intersection of said Salinas-Monterey Highway and the Marina-Hilltown Road, including all points on all highways in the territory

laterally within three miles of the route herein-above set forth.

- (b) Beginning at a point formed by the intersection of U. S. Highway No. 101 with the Salinas-Watsonville Highway in the City of Salinas, thence northwesterly along said Salinas-Watsonville Highway to a point formed by the intersection by said Salinas-Watsonville Highway with Dolan Road just north of Moss Landing including all points on all highways in the territory for a distance of three (3) miles laterally of the hereinabove described routes.

Provided, however, that no service may be given north of Dolan Road in the territory described in Route (b) herein next above described nor north of the Monterey County Line in territory (a) hereinabove described and further provided that on northbound trips only, delivery only of freight may be made to San Jose, Mountain View and Oakland.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to J. W. Silva for the operation of service hereinabove described, 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 sixty (60) 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.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 29th day of
June, 1930.

CL Seamy
Erin O'Sullivan

Thos O'Connell

W. J. Carr
Commissioners.