

Decision No. 22779

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application)
of E. F. ZANETTA for Certificate)
of Public Convenience and Necessity)
to operate freight and express ser-)
vice as a common carrier between)
Monterey, California, and San)
Francisco, California.)

Application No. 16,000

ORIGINAL

John Thompson, for Applicant.

E. A. Bagby and R. M. Mather, for
Southern Pacific Motor Transport
Company, California Transit Co.,
and Pickwick Stages System,
Protestants.

W. S. Johnson, for Southern Pacific
Company and Wermuth Transfer,
Protestants.

Edw. Stern, John Cain and W. S.
Johnson, for Railway Express Agency, Inc.,
Protestant.

R. M. Hayes, for Highway Transport Company,
Protestant.

BY THE COMMISSION:

O P I N I O N

E. F. Zanetta has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by him of an automobile truck service as a common carrier of freight and express between Monterey and San Francisco and intermediate points.

Public hearings on this application were conducted by Examiner Handford at San Francisco and Monterey, the matter was duly submitted and is now ready for decision.

Applicant proposed to charge rates in accordance with a schedule and classification marked "Exhibit A" as attached to and forming a part of the application; to operate one round trip daily, leaving Monterey at 6.00 P.M. and arriving at San Francisco at 4.00 A.M., and in the reverse direction leaving San Francisco at 6.00 P.M. and arriving at Monterey at 4.00 A.M. On the northbound trips, applicant proposes to serve the intermediate communities at Seaside, Castroville, Watsonville, Gilroy, San Jose and Oakland. On the southbound trips, applicant proposes to serve the intermediate points at San Mateo, Burlingame, Palo Alto, San Jose, Gilroy, Watsonville, Castroville, Marina and Seaside. Service is also proposed between Monterey and Pacific Grove and between Monterey and Carmel, deliveries to Pacific Grove and to Carmel being made one-half hour after the arrival of southbound trucks at Monterey. Applicant proposes to use as equipment 6 trucks and 2 trailers, with a total manufacturer's rating capacity of 17½ tons.

Applicant relies as justification for the granting of the desired certificate upon the following alleged facts: that existing transportation facilities do not give as rapid or direct service as that herein proposed by applicant; that business concerns in Monterey can place orders for goods in San Francisco, have same shipped over applicant's line in the evening and have them available in Monterey before business hours on the following morning, including store door delivery; that business men of Monterey, Carmel, Pacific Grove, Seaside, Marina, Castroville and San Francisco desire the service which applicant proposes to establish; and that applicant has been

engaged in the trucking business for a considerable time and is able to establish a satisfactory service for his prospective patrons.

E. F. Zanetta, applicant herein, testified that he was now operating in practically the same manner as proposed by the application, the operation being conducted daily, except Sunday, and requiring six trucks, two of which, with trailers, performed the line haul and the balance being employed in the pick-up and delivery of shipments. The hauling of artichokes and rhubarb at present constitute the greatest volume of his tonnage although other vegetables are hauled in their season, as well as fresh fish from Monterey. The transportation of fresh fish requires its arrival at San Francisco by 2.30 A.M. to meet the demands of the early morning market. Witness also handles, southbound, plumbing goods, groceries, hardware, machinery, nails, steel, pipe and building material. Pick-up is made at Castroville, Carmel Valley and in the Elkhorn and Marina Districts, all pick-ups being within a distance of sixteen miles from the terminal at Monterey. No pick-up is contemplated for the return haul to Monterey other than at the San Francisco terminals. Witness has found, from his investigation, that the merchants of Monterey desire his service and an overnight delivery of their shipments from San Francisco. Many merchants have requested applicant to provide them with service, approximately 200 in number, and pick-up service has been rendered to approximately 75 wholesalers in San Francisco, prompt service being the requirement insisted upon by shippers and consignees. Witness employs five persons in connection with his business and states that his gross receipts from January 1 to November 25, 1929, inclusive, have amounted to

\$23,138.63 with an expense of \$20,328.20. Witness maintains an office and depot in San Francisco, and has been engaged in the trucking business for about ten years, formerly handling truckload quantities only. Witness proposes no service for shipments locally from San Francisco or Oakland to San Jose, or from San Jose to points in San Francisco and Oakland. Witness proposes no pick-up service in the City of Oakland, desiring to serve such point for deliveries only and in a territory bounded by Alice Street, Adeline Street, Tenth Street and the Estuary. Witness is now serving and desires to continue serving all patrons who may desire his hauling, and does not refuse the carriage of goods for anyone.

E. J. Tocchini, employed by Tocchini & Diana, wholesale produce merchants of San Francisco, testified that his firm had done business with applicant for approximately three years, averaging a movement of 300 boxes of artichokes during the artichoke season. Prompt delivery is essential for the class of produce handled by witness' company and the service received from applicant has been satisfactory, being the only truck service available from the Monterey District. Witness has not used Railway Express service from Monterey for three years, all consignments from that territory being handled by applicant.

Lionel Shatz, Secretary and Treasurer of A. Paladini, Inc. wholesale fish dealers of San Francisco, testified that applicant had been employed to haul fresh fish from Monterey to San Francisco and had transported such commodity ever since he began business. Witness stated that without the service rendered by applicant it would not be possible for his company to handle fresh fish from Monterey.

R. C. Ingels, operating a tire business at Monterey, testified that applicant had hauled merchandise for him from San Francisco to Monterey, said service being satisfactory as orders could be placed in San Francisco up to 5.30 P.M. and he could receive delivery in Monterey not later than 7.30 A.M. on the following morning.

J. A. Zanetta, employed as local manager for A. Paladini, Inc. at Monterey, testified that applicant had been hauling fresh fish from Monterey to San Francisco for his company for the past six or seven years, the service having been very satisfactory principally due to its expedition and the fact that less handling was required by truck shipment. Witness knew that the schedule of train service had been changed during the past three years, and that such change had not been beneficial to his business, no express service at the time of the hearing being available after 1.00 P.M. Witness knows nothing regarding rates, as all charges are paid by the consignee at destination, but is satisfied with the service which has been regularly rendered daily since its inauguration. Witness was not satisfied with the service rendered by railroad express, stating that fresh fish was not handled properly. It was formerly required that fish be taken to the railroad station at Monterey by the shipper for forwarding via rail express, but the express company now picks up the shipments at the wharf of consignor. Witness had noticed no change in the railroad freight service during the thirty days prior to the hearing.

Roy M. Wright, a witness in the electrical and hardware business at Pacific Grove, testified as to his use of the service of applicant to the extent of \$60.00 to \$70.00 in

transportation charges each month, finding the service satisfactory, it being fast and convenient. Witness has not found the rail express service to be dependable and desires a continuance of the present truck service of applicant.

Roy Barton, a witness in the heating, plumbing and sheet metal business at Monterey, testified that he used the service of applicant, his monthly transportation charges paid to applicant averaging \$80.00; that the service is satisfactory, being prompt and reliable; and that the rail freight service is not satisfactory in that it does not accomplish delivery of witness' consignments from San Francisco prior to 8.00 A.M.

R. S. Tice, in the electrical contracting and merchandise business at Monterey, has used the service of applicant for one and one-half years in the transportation of shipments from San Francisco, his transportation charges averaging from \$80.00 to \$100.00 per month. The service is used practically every day and has been satisfactory.

W. E. McConnell, in the electrical business at Monterey, has used applicant's service from San Francisco to an extent of \$75.00 to \$80.00 in monthly freight charges, and has received satisfactory service.

C. W. Cassin, a grocery store proprietor of Monterey, testified that his shipments from San Francisco averaged about 20 tons per month over the line of applicant and that the monthly freight charges approximated \$100.00. Applicant has transported freight for this witness for the past three or four months, the service being very satisfactory from the standpoints of personal contact with the carrier and prompt service in the delivery of shipments. Witness requested applicant to transport his shipments.

W. Ross, employed as superintendent of construction for the E. E. Larsen Co., building contractors of San Francisco, testified that he had used the service of applicant for the hauling of all material shipped from San Francisco and used in the construction of a new hospital at Monterey. The service was satisfactory, especially as to the prompt delivery of material at the building site.

By stipulation it was agreed that witnesses for the following shippers or receivers of freight if called to testify, would testify that they had used the service of applicant and found it to be reliable and satisfactory.

<u>FIRM</u>	<u>BUSINESS</u>	<u>LOCATION</u>
Vosmer Sheet Metal Works.	Sheet Metal and Electrical Business	Monterey
Pierson Toll	Hardware and Plumbing	Monterey
Hayes & Richards	Hardware and Plumbing	Monterey
Peninsular Plumbing Co.	Plumbing	Monterey
Carroll & Searle	Electrical Business	Pacific Grove
J. W. Ingram	Plumbing	Monterey
Patrick, the Plumber	Plumbing	Monterey
Ewig Grocery	Groceries	Carmel
Joe Perry	Groceries	Monterey
Pebblemont Grocery	Groceries	Monterey
Doud Meat Market	Meats	Monterey
Wood Bros.	Meats	Monterey
Vining Bros.	Meats	Monterey
Home Restaurant	Restaurant	Monterey
Palace Grill	Restaurant	Monterey
John's Cafe	Restaurant	Monterey
Rainbow Cafe	Restaurant	Monterey
Monterey Grill	Restaurant	Monterey

M. J. Murphy Co.	Builders	Carmel
Dorsett & Ruhl	Builders	Pebble Beach
Wade Halstead	Builder	Monterey
T. B. Reardon	Electrical Work	Carmel
E. Burnham	Plumbing and Sheet Metal	Carmel

John Ameil, an artichoke grower of Carmel Valley, testified that applicant had transported artichokes from his ranch to San Francisco for about three years, giving satisfactory service. Witness ships from 70 to 150 boxes of artichokes daily during the season, the shipments varying in accordance with the market and seasonal conditions. Witness estimates his yearly freight bills on the shipment of this commodity to vary from \$600.00 to \$700.00. Applicant picks up the shipments at the ranch of witness, thereby saving the expense of hauling to Monterey for shipment. Witness has no contract with applicant, who solicited the hauling and has given regular, dependable and satisfactory service. Witness has no complaint regarding the service offered by other carriers, but is entirely satisfied with that rendered by applicant.

Ed. Simpson, in the plumbing and sheet metal business at Pacific Grove, testified that he had used the service of applicant for the past year, 75% of his shipments from San Francisco being hauled by applicant, the service being satisfactory and a great convenience as regards rush shipments. Applicant has no contract with the witness respecting the transportation of his shipments, and witness was not aware of any change having been made in the rail freight service during the sixty days prior to the hearing.

By stipulation it was agreed that the testimony of the following ranchers of Carmel Valley would be similar to that of witness Amelio E. Odello, Mr. Ravelli, Mr. Vangelisti, Manager San Carlos Ranch, a corporation, Steve Pottasio, and Mr. Agusti.

By stipulation it was agreed that the testimony of eight ranchers, residing in the vicinity of Castroville, if called, would be to the effect that they were using the service of applicant for the transportation of their products to San Francisco, that the service was satisfactory and that they desired its continuance. A similar stipulation was made regarding five ranchers, and five merchants of Marina and four merchants of Seaside.

The granting of the application is protested by Southern Pacific Company, Railway Express Agency, Inc., Highway Transport Company and F. A. Wermuth.

J. E. Minger, residing at Monterey and engaged in the transfer and drayage business, testified that he handled inbound freight from the Southern Pacific station at Monterey to the business houses of consignees; that the service of the railroad on shipments from San Francisco has been improved during the past few months, an earlier arrival of freight now being in effect; that witness now begins his deliveries about 9.30 A.M. and is usually finished with all deliveries by 1.00 to 2.00 P.M.; and that formerly incoming freight was not available until 3.00 P.M. and at times not until the second day after its forwarding from San Francisco. Witness knows of the present truck service now conducted by applicant, having observed his trucks delivering freight to the merchants of Monterey after 6.00 A.M. Witness has never received complaint from his patrons regarding late delivery of freight from the Southern Pacific depot or

for a delivery by 8.00 A.M., it being his practice in case of rush shipments to endeavor to make such deliveries first after leaving the freight station.

F. A. Wermuth, residing in Carmel and engaged in the transfer and storage warehouse business, operating transportation service under the authority of the Commission between Monterey and Carmel, testified that he operated regular scheduled freight truck service between Monterey and Carmel making four round trips daily. Witness makes prompt delivery of rail shipments from San Francisco to Carmel, securing the freight at the rail depot in Monterey and has had no complaint from his patrons regarding the combined service as rendered by Southern Pacific Company and his truck line. Witness knows of the earlier arrival of the railroad freight at Monterey and of the operations of applicant in Carmel having seen trucks of applicant making deliveries to the merchants. It is the contention of this witness that the present service available from San Francisco to Carmel by the facilities of the railroad and his connecting truck line is adequate and a satisfactory service. Witness has an investment of approximately \$100,000.00 in his warehouse and truck line business, and claims that his investment, particularly as regards the truck line, is menaced by the proposal of the applicant and that the existing volume of freight does not justify the operation of an additional carrier between Monterey and Carmel. Witness particularly objects to the present operations of applicant as being conducted prior to authorization having been secured. Witness does not follow the route between Monterey and Carmel which serves the artichoke and produce growers in Carmel Valley that are now using the service of applicant and who desire such service continued.

E. B. Walling, Agent of protestant Southern Pacific Company at Monterey, testified that freight received at San Francisco up to 4.00 P.M. was available for delivery at Monterey between 9.00 and 10.00 A.M. the following morning and that such arrival time had existed for about thirty days, prior to which arrival at Monterey was at 1.00 P.M. Witness has heard no complaints or adverse comment by patrons regarding the service as now available. Witness knows of applicant's operations and that he is hauling all classes of merchandise from San Francisco to Monterey.

E. A. Teubner, Assistant District Freight Agent of Southern Pacific Company and residing at Watsonville, testified that he frequently called on the merchants and patrons of his company at Monterey in the solicitation of business. He has had no complaint relative to the adequacy of service or time of delivery of shipments from San Francisco since the inauguration of the latest schedule, although having had some complaints regarding late delivery during the period prior to the establishment of the revised schedule.

W. E. Parker, Agent for protestant Railway Express Agency, Inc. at Monterey, testified regarding the service rendered by his company to the shippers and consignees at Monterey, and that two pick-up and delivery services were available daily, except Sunday, in the territory known as "Old Monterey". Witness also presented a schedule of train service upon which express shipments were handled, said exhibit showing three round trips daily between San Francisco and Monterey. Witness has not heard of any demand from merchants of Monterey for additional express service.

We have thoroughly considered all the evidence herein. It appears from the record that applicant first commenced operation some six or seven years ago in the transportation of fresh fish from Monterey to wholesale fish markets at San Francisco. The business of hauling fish has been expanded to the hauling of other commodities such as vegetables - principally artichokes - and from hauling on a truckload basis to a general hauling of all commodities and in any quantity for anyone who may desire his service or who may be secured as a customer by solicitation. In addition to the enlargement of the commodities handled applicant has gradually extended the territory in which his operations have been and are proposed to be continued until instead of operations being between San Francisco and Monterey, applicant is now handling all commodities to not only Monterey but to Pacific Grove, Seaside, Carmel, Marina and Castroville and intermediate wayside points, and is hauling from all the above mentioned points, including ranches and farms in Carmel Valley and the vicinity of Castroville to San Francisco with deliveries at Oakland as intermediate on the northbound trips. The record herein does not warrant or justify the Commission in granting a certificate of public convenience and necessity based on a showing that by unauthorized operation and active solicitation a demand has been created for service, a large portion of which could be adequately and properly cared for by the facilities of existing and authorized carriers. We find nothing unreasonable in the present rail freight service resulting in an arrival at Monterey and in merchandise being available for delivery at the freight house by 9.00 A.M., thus furnishing the over-night service from San Francisco alleged by applicant to be necessary and a requirement of the Monterey merchants.

Applicant herein previously filed an application (Application No. 12499) for a certificate of public convenience and necessity to transport fish from Monterey to San Francisco and fresh fruits, poultry, etc. on the return haul, San Francisco to Monterey. Prior to the decision on said application and after a hearing thereon, applicant through his attorneys requested a dismissal of the application on the basis that the service he proposed to perform and for which he had requested certification was that of a private contract carrier and not that of a common carrier. Upon receipt of such representation and advice, the Commission on September 2, 1926 issued its Decision No. 17302 dismissing the application, without prejudice, for the reasons advanced by applicant.

In the instant proceeding we find the testimony of applicant that the business he is now doing is from 50 to 75 per cent greater than that existing at the time of the former application; that applicant has now no contracts with anyone for the transportation of their shipments; and that applicant is now operating in the same manner that he proposes to do, and continue, if the application should be granted.

We find no showing herein that the application should be granted to the full extent herein sought. The slightly earlier arrival at Monterey may meet the convenience of some consignees desiring early morning store-door delivery, but the present available service of other authorized carriers against which there is little or no complaint must be considered. There was no testimony in this proceeding regarding the matter of rates or comparison as to the rates proposed by applicant with those of existing authorized carriers.

After full consideration of all the evidence and record herein we are of the opinion and hereby find as a fact that applicant has justified the granting of a certificate of public convenience and necessity over the routes as set forth in the declaration, as appearing in the following order for the transportation of fresh fish, abalone (in shell and sliced), abalone shells, poultry (live and dressed), rabbits (live and dressed), farm and ranch products and for the return haul of returning empty containers, feed and farm supplies only when said feed and farm supplies are destined to points from which shipments originate for northbound movement.

E. F. Zanetta 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

Public hearings 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 conclusions and findings of fact, as set forth 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 E. F. Zanetta of an automobile truck line as a common carrier of freight, limited as to commodities as herein shown, between the communities of Carmel, Pacific Grove, Marina,

Monterey, Seaside and Castroville on the one hand, and San Jose, Oakland and San Francisco on the other hand, for the transportation of the following commodities only: fresh fish, abalone (in shell and sliced), abalone shells, poultry (live and dressed), rabbits (live and dressed), farm and ranch products, northbound; and returning empty carriers, feed and farm supplies, southbound, provided that said feed and farm supplies must be consigned and destined to points from which shipments originate for northbound movement, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be, and the same is hereby granted to E. F. Zanetta for the operation of an automobile truck line as a common carrier of freight over the public highways between the communities of Carmel, Pacific Grove, Marina, Monterey, Seaside and Castroville and intermediate points, on the one hand, and San Jose, Oakland and San Francisco, on the other hand, for the transportation of the following commodities only, and no other; northbound, fresh fish, abalone (in shell and sliced), abalone shells, poultry (live and dressed), rabbits (live and dressed), farm and ranch products. Southbound, returning empty carriers, feed and farm supplies, provided, however, that said feed and farm supplies must be consigned and destined to points from which shipments originate for northbound movement.

The authority hereby granted for service to San Jose and Oakland covers the delivery of shipments only, no pick-up of shipments in Oakland or San Jose for delivery to any point being hereby authorized. Authority for the use of alternate routes between San Jose and San Francisco is

hereby authorized as regards northbound movement as regards either the route via Oakland or via the Peninsular or Bay Shore Highways.

The authority herein contained is subject to the following conditions:

- 1- That as to service to unincorporated communities herein authorized, said service shall be limited to points within 5 miles on either side of the main highway traversed.
- 2- That applicant shall file within 20 days from the date hereof a map drawn to scale, showing territory, points and routes served under authority of the certificate herein granted.
- 3- Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed 10 days from the date hereof.
- 4- Applicant shall file in duplicate, within a period of not to exceed 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, insofar as same may be applicable to the authority herein granted, or rates and schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed 30 days from the date hereof.
- 5- The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor operation thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance of service has first been secured.
- 6- 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.

For all purposes, other than hereinabove specified, the effective date of this order is hereby fixed as twenty (20) days from the date hereof.

Dated at San Francisco, California, this 11th day of August, 1930.

C. C. Smith
John W. White
Thos. D. Lott
W. P. Van
Commissioners.

DISSENTING OPINION

It seems to me that the decision of the Commission is based entirely upon the past illegal operation of Zanetta. The facts are as stated in the following paragraph from the majority opinion: "It appears from the record that applicant first commenced operation some six or seven years ago in the transportation of fresh fish from Monterey to wholesale fish markets at San Francisco. The business of hauling fish has been expanded to the hauling of other commodities such as vegetables - principally artichokes - and from hauling on a truckload basis to a general hauling of all commodities and in any quantity for anyone who may desire his service or who may be secured as a customer by solicitation. In addition to the enlargement of the commodities handled applicant has gradually extended the territory in which his operations have been and are proposed to be continued until instead of operations being between San Francisco and Monterey, applicant is now handling all commodities to not only Monterey but to Pacific Grove, Seaside, Carmel, Marina and Castroville and intermediate wayside points, and is hauling from all the above mentioned points, including ranches and farms in Carmel Valley and the vicinity of Castroville to San Francisco with deliveries at Oakland as intermediate on the northbound trips." All this, he has done without any certificate from this Commission. At the former hearing applicant testified that he was a contract carrier, now he testifies that he never has been a contract carrier. His business has grown from one truck to ten trucks and apparently has reached the stage where he deems it expedient to have the stamp of legality put upon his illegal operations.

I can see no justification for rewarding violations of the law. It seems to me that the Commission should start

an investigation on its own motion, order this applicant to desist from his unlawful operation and if he does not cease should inflict proper punishment upon him. From his past conduct I can see no future observance of the law by him. The effect of this decision is to reward an illegal operator for his unlawful acts and to penalize a lawful operator by admitting into the fold one who has never observed the law and probably never will.


Commissioner