

Decision No. 22990.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of
RICE TRANSPORTATION COMPANY,
a corporation, for certificate of
public convenience and necessity to
extend existing service, from Tustin
to and including El Toro.

ORIGINAL

Application No. 16844.

H. J. Bischoff, for Applicant.

William F. Brooks for Atchison, Topeka and
Santa Fe Railway Company, Protestant.
Thos. Richards for Richards Trucking and
Warehouse Company, Protestant.

BY THE COMMISSION:

O P I N I O N

Applicant herein operates an automobile truck service for the transportation of freight between Los Angeles, and various Southern California points, including Orange, Santa Ana and Tustin. By this application it seeks to extend service from Tustin to and including El Toro, a point in Orange County some fifteen miles southeast of Santa Ana. It is proposed to serve all intermediate points between the termini and within a distance of three miles on either side of the state highway. Applicant also requests the removal of a restriction in its certificate limiting consignments of freight between Los Angeles Harbor district and Orange County points to quantities not exceeding three tons from any one consignee.

A public hearing was held by Examiner Cannon at Tustin and the matter was submitted.

The application sets forth that the service proposed will consist of one schedule each way daily, leaving Santa Ana at ten o'clock in the morning going south, and El Toro at one o'clock in the afternoon going north. During the vegetable season special trucks will leave Irvine daily at 6:00 p.m. bound for Los Angeles, and a special service for shipments of five tons or over will be rendered on three hours' notice to applicant's Santa Ana office. No extra equipment will be necessary for the added service. Rates will be substantially the same as those applying to and from Santa Ana.

As to the proposed extension, applicant offered a number of witnesses who testified that they would use the service and that they were considerably inconvenienced in their business by reason of the lack of such service. The territory through which applicant proposes to extend its line is devoted largely to the growing and shipping of beans and citrus fruit. One witness testified that approximately 40,000 acres were planted to beans alone. All of this naturally creates a demand for local trucking service from Santa Ana south. Witnesses from Santa Ana, Tustin, Culvers Corner and Irvine testified that there was a constant daily movement of commodities in and out of their respective communities, presently handled by private trucks, which service was neither convenient nor economically satisfactory. Tires, accessories, groceries, fruits, ice cream, meats and dairy products are some of the commodities which require the quick and frequent service offered by applicant.

Rail service in the territory is afforded by The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company. The Santa Fe serves Santa Ana, Irvine, and El Toro, while the Southern Pacific reaches Santa Ana and operates within a short

distance of Tustin where its branch line terminates. This service, however, does not meet the requirements of the communities between Santa Ana and El Toro. The record is sufficiently persuasive to convince us that there is need for the extended service offered by applicant.

The request for removal of the weight restriction is based upon a demand of shippers of heavy consignments from and to the harbor district and the present lack of trucking facilities on such large shipments. At the time this applicant took over, by purchase, certain operating rights from its predecessor in interest, it acquired the operating right with which we are here concerned. That particular right restricted the then applicant from transporting freight in quantities exceeding three tons in any one consignment. The testimony indicated that there was no demand for public transportation of shipments in excess of that weight limit, and the restriction was imposed as a protection to Hodge Transportation System which served the identical points proposed by the then applicant, and whose certificate authorized the transportation of shipments of three tons or over. Hodge Transportation System is no longer operating in this territory as a common carrier, its certificate having been revoked by the Commission in Decision No. 18825 dated September 20, 1927, and the reason for the restriction is therefore removed.

In addition to this fact the applicant produced at the hearing several witnesses who testified that they had constant need of a trucking service between Orange County points and the harbor district without regard to a weight limit. There is a daily movement of commodities from shipside at the harbor

district to Santa Ana, Tustin and other points, as well as a movement of citrus fruits, beans and grain in the opposite direction. This is business which is denied the applicant on account of weight limitations in his certificate. The withdrawal of the Hodge common carrier service and the testimony of prospective users of the proposed service show a public need for the facilities offered by the applicant and the application will be granted as prayed for. It should be understood, however, that the order issued herein does not authorize consolidation of the various operative rights now owned by Rice Transportation Company except to the extent indicated by the order herein extending the Los Angeles-Santa Ana right.

Rice Transportation Company, a corporation, 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

A public hearing having been held in the above entitled application and the matter having been submitted,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby declares that public convenience and necessity require the operation of an automobile truck freight service between Tustin and El Toro, and intermediate points, via the main State highway,

serving all points within a distance of three miles on either side of said main State highway between said points, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such a service be and the same is hereby granted to Rice Transportation Company, a corporation, subject to the following conditions:

1. The service herein authorized shall be conducted as an extension of the service between Los Angeles and Santa Ana and intermediate points under operating rights as determined by our Decision No. 9330 issued in Case No. 1622 and as extended by Decision No. 9552 issued on Application No. 7095 and not as a separate right.
2. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from the date hereof.
3. Applicant shall file in duplicate and make effective within a period of not to exceed thirty (30) days from the date hereof, a tariff, or tariffs, constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which in volume and effect shall be identical with the rates and rules shown in the exhibit attached to the application, and shall also file time schedules satisfactory to the Railroad Commission.
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 it under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that the weight restriction heretofore imposed on the operating rights granted by the Railroad Commission in its Decision No. 12969, which right was acquired by Rice Transportation Company, a corporation,

under authority of Decision No. 22639, be and the same is hereby removed.

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

Dated at San Francisco, California, this 23^d day of October, 1930.

Cl. Scamney

Leon Whittell
Thos. E. Smith

Commissioners.