

ORIGINAL

Decision No. 28180

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 P. D. JOHNSON for a certificate of public
 convenience and necessity to operate an
 auto truck service as a common carrier
 for compensation over the public highways
 between San Francisco and Oakland on the
 one hand, and Delano, Bakersfield, Magunden,
 Weedpatch and Arvin districts on the other
 hand.)
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) Application
) No. 16807
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- Phil Jacobson, for Applicant.
- Edw. Stern, for Railway Express Agency, Inc.,
Protestant.
- W. F. Brooks, for The Atchison, Topeka and
Santa Fe Railway Company, Protestant.
- W. S. Johnson, for Southern Pacific Company
and Pacific Motor Transport Company,
Protestants.
- R. L. Vaughan, for Consolidated Motor Transport
Company and Merchants Express & Draying
Company, Protestants.
- O. Melveny, Tuller & Meyers, by H.E. Northway,
for Pacific Freight Lines, Interested party.

BY THE COMMISSION -

O P I N I O N

P. D. Johnson, by his amended application, has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by him of an auto truck service as a common carrier of freight between San Francisco and Oakland on the one hand, and Delano, Bakersfield, Magunden, Weedpatch and Arvin districts, on the other hand.

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

Applicant, by his amended application, proposes to charge rates in accordance with a schedule marked "Exhibit A" as attached to and forming a part of the amended application; to

serve as free pick-up and delivery zones the entire corporate limits of the City of Bakersfield, the town of Delano and also for a distance two and one half miles on either side of the highway between the northern boundary of the town of Delano and through Bakersfield, Magunden and Arvin; free pick-up and delivery limits in the cities of San Francisco and Oakland are specifically defined by a description contained in "Exhibit X" as attached to the amended application; also proposes to operate on a schedule of one round trip daily, except Saturday, northbound, and daily, except Sunday, southbound, using as equipment two ten ton Moreland trucks, two 2½ ton Moreland trucks; two Pike trailers of six and ten tons capacity, respectively, all trucks to be equipped with pneumatic tires, a total carrying capacity (manufacturer's rating) of 41 tons.

Applicant relies as justification for the granting of the desired certificate upon the following alleged facts: that there is at the present time and has been for some time last past a large volume of freight moving by motor truck from Oakland and San Francisco to the Bakersfield territory and that in addition, by reason of the market conditions, a large volume of the fresh fruits and vegetables, which formerly moved to Los Angeles, are now moving to San Francisco and Oakland from the Delano, Bakersfield, Magunden, Weedpatch and Arvin territory; that said transportation at the present time is being conducted by trucks not under the jurisdiction of the Railroad Commission; that applicant has been requested by a large number of shippers to establish a daily, dependable service between the points herein enumerated and that, after investigation, applicant believes that a sufficient tonnage will be available for transportation by a daily service between Bakersfield and the territory herein applied for and Oakland and San Francisco, and that said tonnage will compensate and maintain the proposed service.

Applicant further alleges that he is financially able to carry on the proposed service.

P.D. Johnson, applicant herein, testified that he was the owner of eight trucks and three trailers which had cost approximately \$65,000 and upon which there was approximately \$2500.00 due on sales contracts. Witness also owns real estate at Bakersfield valued at \$50,000, upon which there is a mortgage incumbrance of \$4500. Witness has hauled fruit and vegetables from the Bakersfield territory to San Francisco and Oakland for the past two and one half years, some 50 to 60 growers insisting that he render service. The territory from which he hauls, adjacent to Bakersfield, is noted for the early production of apricots, peaches, plums, pomegranates, cabbage, cauliflower, turnips, bell peppers, tomatoes, cantaloupes and watermelons. Witness has heretofore transported practically full truck and trailer load lots northbound and has transported back hauls of groceries and general merchandise, principally in truckload lots, to Bakersfield and its vicinity. He has received many requests, extending for over a year, to establish a regular daily service not only from growers of fruits and vegetables but also from merchants who wish their consignments hauled by such a trucking service as that proposed herein. Witness proposes to establish terminals in San Francisco, Oakland and Bakersfield and to render pick-up and delivery service in specific zones in Oakland and San Francisco, also to maintain two pick-up and delivery trucks at Bakersfield, one at Delano, one at Oakland and one at San Francisco.

Thirty one witnesses testified in favor of the granting of the application, seven being merchants or their representatives from San Francisco, and Oakland, seventeen from Bakersfield and one from Delano, also six farmers and fruit growers in the districts adjacent to Bakersfield.

The testimony of these witnesses indicated a desire for the establishment of a daily truck service as proposed by the applicant and a willingness to patronize such service if the same were to be inaugurated. By stipulation the testimony of eighteen witnesses was admitted as being substantially the same as other witnesses who favored the granting of the application, thirteen of these stipulated witnesses being merchants or their representatives from San Francisco or Oakland, one from Bakersfield and four farmers or orchardists from the territory south of Bakersfield. The affirmative testimony of the witnesses favoring the application expresses their desire for an overnight service for their shipments, particularly as regards the movement of fruits, vegetables and produce to San Francisco and Oakland, and the shipment of merchandise and other commodities to points in and adjacent to Bakersfield, and to receive the benefit of store door pick-up and delivery at all points proposed to be served by the applicant. While the witnesses expressed no particular complaint against the existing rail freight and express facilities and service, practically all of them preferred to use truck service and such proposed service as is contemplated by the applicant.

The granting of the application is protested by Southern Pacific Company, Railway Express Agency, Inc., The Atchison, Topeka & Santa Fe Railway Company, Pacific Motor Transport Company and Pacific Freight Lines.

Witnesses for the protesting rail carriers testified regarding the service offered by such lines from which it appears that freight forwarded from San Francisco via the line of The Atchison, Topeka & Santa Fe Railway Company is available for delivery at Bakersfield on the early afternoon of the following day, that from Oakland on the morning of the second day after its forwarding from San Francisco in the reverse direction

freight forwarded from Bakersfield is available for delivery at San Francisco and Oakland on the morning of the second day after forwarding from Bakersfield. Freight forwarded from San Francisco and Oakland via the rail line of the Southern Pacific Company is available for delivery at 7:00 A.M. of the second morning after its forwarding from San Francisco or Oakland in the reverse direction freight forwarded from Bakersfield, is available for delivery at San Francisco or Oakland on the morning of the second day following its forwarding from Bakersfield.

Both rail lines assert that adequate facilities and equipment are available for the handling of all commodities and merchandise offered for shipment and that facilities now offered are not utilized to their capacity, the Southern Pacific Company presenting a check of less than carload freight forwarded from San Francisco and Oakland for the month of September, 1930, which shows the following figures:

From San Francisco	12274 pounds
East Oakland	6233 "
Richmond	1621 "
Pacosteel	552 "
Oakland	588 "

The tonnage forwarded via The Atchison, Topeka & Santa Fe Railway Company from San Francisco to Bakersfield approximates 10,000 pounds of less than carload freight daily, that from Oakland being considerably less and fluctuating in volume. If 8500 pounds or more, are presented at Oakland for transportation over the line of this carrier, it is the practice to load a straight car for Bakersfield, thus enabling earlier arrival and readiness for delivery.

The Bakersfield agent of Railway Express Agency, Inc., testified that his company maintained adequate pick-up and delivery service covering practically the entire corporate limits of the city of Bakersfield, five trucks being employed in such service and the business district being regularly covered several times daily special pick-ups being also made upon request; that two railroad/^{offices} and one uptown office were maintained, all of which were open during business hours, the office at the Southern Pacific station being open during all hours of the day and night. No complaints have been received by this witness respecting the matter of service as rendered by the rail express company. By stipulation it was agreed that Railway Express Agency, Inc. performs pick-up and delivery service in the cities of San Francisco and Oakland in accordance with zones as stated in its tariffs lawfully on file with this Commission; and that it performs service on seven passenger trains daily between San Francisco, Oakland and Bakersfield, upon all of which emergency shipments are accepted at the car door by messengers.

Eighteen witnesses, merchants and business men of Bakersfield, testified regarding the satisfactory service rendered to them by the rail lines and the facilities of Railway Express Agency, Inc. None of these witnesses have any need for the service of the proposed truck line and none testified that they would use it, in the event of its authorization by the Commission, being fully satisfied with the present service as now rendered by rail and express by the presently authorized carriers.

We have carefully considered all the evidence, exhibits and stipulations which comprise the record in this proceeding.

While some evidence appears regarding the public convenience and necessity for the movement of fruits, vegetables and melons from the districts located south of Bakersfield and not readily available to the service rendered by the rail lines, there is no evidence available which would warrant the granting of a

certificate for the return haul of merchandise and commodities from San Francisco or Oakland to business houses or merchants at Delano or Bakersfield nor for any commodity returning other than empty containers or farm supplies necessary to the ranchers or orchards located at points distant from the rail lines and from which loads are shipped.

We do not find from the record herein that any necessity exists for the transportation of merchandise and commodities from San Francisco or Oakland to the merchants and business houses at Bakersfield or Delano, the present facilities for rail and express being ample for the movement of such merchandise and with no material complaint as to rates and service. As to the necessity for the movement of fruits, vegetables, farm and orchard products from portions of the proposed territory not included in the corporate limits of Bakersfield and Delano, the record justifies the granting of a certificate of public convenience to enable ranchers and orchardists to forward their products to the San Francisco and Oakland markets and to receive such empty containers, farm and orchard supplies as may require movement to the points from which shipments of fruits, vegetables, farm and orchard products may be forwarded. The order herein will so provide.

P. D. Johnson 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 hearings having been held upon the above entitled application, the matter having been duly submitted and the

Commission being now fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by P. D. Johnson of an automobile truck service as a common carrier, for compensation, over the public highways between San Francisco and Oakland on the one hand, and Delano, Bakersfield, Magunden, Weedpatch and Arvin districts on the other hand, and for pick-up and delivery service in the cities of San Francisco and Oakland and for pick-up and delivery service in the Delano, Bakersfield, Magunden, Weedpatch and Arvin districts at any point on the main highways, excepting the territory within the corporate limits of the cities of Delano and Bakersfield, and for two and one half miles on either side of the main highways south of Delano; provided, however, that the authority hereby conveyed covers only the transportation of fresh fruits, vegetables, melons, farm and orchard products from the Delano, Bakersfield, Magunden, Weedpatch and Arvin districts destined to San Francisco and Oakland and the return haul of empty carriers, farm or orchard supplies or merchandise only when destined to points in the Delano, Bakersfield, Magunden, Weedpatch or Arvin districts at points or to shippers from which northbound consignments of fresh fruits, vegetables, melons, farm or orchard products are forwarded.

This order does not authorize applicant to engage in the business of transporting any merchandise or commodity to persons, firms or corporations located within the corporate limits of the cities of Delano or Bakersfield.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same hereby is granted to P. D. Johnson for the operation of an automobile truck line as a common carrier, for compensation, over the public highways between San Francisco and Oakland on the one hand, and the Delano,

Bakersfield, Magunden, Weedpatch and Arvin districts on the other hand, including pick-up and delivery service in the cities of San Francisco and Oakland as hereinafter specified and for a distance of two and one half miles on either side of the main highway south of the City of Delano and excluding such service within the corporate limits of the City of Bakersfield, said highways being more specifically referred to in this order. The authority hereby granted covers the transportation of fresh fruit, vegetables, melons, ranch and orchard products from the districts south of Delano including Bakersfield, except within the corporate limits of Bakersfield, Magunden, Weedpatch and Arvin to San Francisco and Oakland, provided, however, that no return haul of merchandise or commodities shall be made from San Francisco or Oakland to the merchants or to any person, firm or corporation whose place of business is located within the corporate limits of the cities of Delano or Bakersfield, nor any receipts or deliveries of freight be made by applicant at any point between San Francisco and Oakland on the one hand, and points south of the southerly boundary of the City of Delano on the other hand, nor shall any merchandise or commodities be transported southbound from San Francisco or Oakland except empties returning, feed, ranch or orchard supplies or commodities, and only when destined to consignees who may be shippers of the merchandise or commodities to San Francisco or Oakland as herein authorized.

The pick-up and delivery limits in the cities of Oakland and San Francisco are hereby authorized as follows:

San Francisco: Zone bounded by Van Ness Avenue, thence to Eleventh Street, thence to Mission Street, thence to Army Street, thence to San Francisco Bay.

Oakland: Zone bounded by Yerba Buena Street, thence to 40th Street, thence to Monta Vista Street, thence to Grand Avenue, thence to Lakeshore Boulevard, thence to East Twenty-fifth Street, thence to Foothill Boulevard, thence to High Street, and thence to Oakland Estuary.

The highways south of the southerly city limits of Delano and in the Bakersfield, Magunden, Weedpatch and Arvin districts over which, and for a distance two and one half miles on either side of which, the pick-up and delivery of shipments are hereby authorized are the main state highway between Delano and Bakersfield, Chester Avenue in the City of Bakersfield, Sumner Avenue in the City of Bakersfield and its extension into the state highway to the road leading south from said highway at Magunden, the road or highway leading south from the main highway at Magunden to a connection with the road leading easterly, southerly and easterly to the community at Arvin. No business is to be transacted locally originating at or destined to any point within the incorporated limits of the City of Bakersfield.

The authority hereby granted is subject to the following conditions:

- 1- Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from the date hereof.
- 2- 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 as attached to the amended application insofar as they conform to the certificate herein granted.
- 3- Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from the date hereof time schedules, covering the service herein authorized, in a form satisfactory to the Railroad Commission.

4- The rights and privileges herein authorized may not be sold, leased, transferred, assigned nor service thereunder discontinued unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment, or discontinuance of service 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 him under a contract or agreement on a basis satisfactory to the Railroad Commission.

The effective date of this order is hereby fixed as twenty (20) days from the date hereof.

Dated at San Francisco, California, this 15th day of December, 1930.

C. S. Seaver

Leon A. White

W. J. Allen
COMMISSIONERS.