

ORIGINAL

Decision No. 23430

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 ASBURY TRUCK COMPANY, a corporation,)
 for a certificate of public convenience) Supplemental
 and necessity to operate freight service) Application
 between all points in the State of) No.10148
 California.)

Libby & Sherwin, by Warren E. Libby, for Applicant.

Douglas Brookman, for San Joaquin Transportation
 Company, Imperial Valley-Los Angeles Express,
 Motor Freight Terminal Company, Protestants.

H. J. Bischoff, for Coast Truck Line, Boulevard Ex-
 press, Los Angeles & Oxnard Express, Motor
 Service Express, Joe and Ed's Express, Pacific
 Motor Express, Protestants.

Frank Karr and R. E. Wedekind, for Southern Pacific
 Company, Protestant.

L. C. Zimmerman, for Southern Pacific Company,
 Protestant.

R. E. Wedekind and L. B. Young for Pacific Electric
 Motor Transport Company, Protestant.

E. Bissinger for Pacific Electric Company, Southern
 Pacific Company and Pacific Electric Motor
 Transport Company, Protestants.

W. F. Brooks, for The Atchison, Topeka & Santa Fe
 Railway Company, Protestant.

BY THE COMMISSION -

O P I N I O N

Asbury Truck Company, a corporation, by its supplemental
 application No.10148, has petitioned the Railroad Commission
 to amend its Decision No.19067 on Application No.10148, as decided
 December 1, 1927, and to amend the operative rights therein
 authorized to include all points thirty miles on either side of
 the highway on all the routes therein authorized.

Public hearings on this application were conducted by Examiner Handford at Los Angeles, testimony was received from applicant and the matter was adjourned pending the issuance of an order clarifying the existing rights now possessed by applicant under the present effective order of this Commission.

It is the contention of and is alleged by applicant that the testimony given by the applicant at the formal hearings, prior to the issuance of Decision No.19067 on December 1, 1927, justified the transportation of all commodities over the eleven routes as authorized by the decision and for a distance of thirty miles on either side of said routes.

At the hearings on this proceeding counsel for protestants objected to the consideration of the supplemental application on the basis that the relief sought as regards the carriage of all commodities, in any quantity, and to destinations located at any point thirty miles each side of the highway connecting the termini on the eleven routes heretofore authorized by Decision No.19067, was an extension and enlargement of the operative rights and should be the subject of a new and separate application and until such application was filed, in accordance with the provisions of the statutory enactment (Chapter 213, Statutes of 1917, and effective amendments), the Commission was without jurisdiction to consider the instant proceeding. It appears, however, that the prayer of the applicant requests the Commission, among other things, to clarify its order heretofore rendered and for such purpose evidence was received from witnesses called by applicant, it being evident that a misunderstanding existed as to the present rights held by applicant and that such applicant, as well as the protestants herein, were entitled to an expression as to the Commission's interpretation of the existing rights held by applicant.

The records of the Commission show that this application was originally decided by Decision No.18150, dated March 3, 1927. On June 9, 1927, by Decision No.18487, a First Supplemental Order was issued defining eleven routes which were authorized by the decision on Application No.10148. On June 9, 1927, an order was issued denying a rehearing sought by certain protestants who appeared at the hearing covered by Decision No.18150, (Decision No.18496 as decided June 9, 1927). On July 13, 1927, the Commission reopened the entire matter for further hearing and determination and after hearings at Los Angeles, on August 16, 1927, the Commission issued its order rescinding and setting aside Decisions No.18150 and 18487, insofar as said decisions were applicable to Application No.10148. On December 1, 1927, the Commission issued its Decision No.19067 on which a petition for rehearing was filed by certain protestants on December 10, 1927, said petition for rehearing being denied by Decision No.19281 on January 23, 1928.

It will be observed from the foregoing that since August 16, 1927, Decisions Nos.18150 and 18487, insofar as said decisions affected Application No.10148, were rescinded and set aside, therefore no further consideration will be given to the rights originally granted by said decisions.

The rights and privileges granted by Decision No.19067, as decided December 1, 1927, said decision being the only one here under consideration, authorized applicant to operate an automobile truck service, on demand, for the transportation of oil well supplies, heavy machinery, pipe, steel and tanks on eleven specific routes, and serving all intermediate points and termini on all of the specified routes, together with the right to transport the above named commodities in truckload

quantities with a minimum load of 4000 pounds between any terminus or intermediate points on any of the eleven mentioned routes, routed to any terminus or intermediate point on any other route.

It will be noted from the above the operative rights possessed by applicant cover only truckload lots of certain specified commodities. The right to transfer all commodities, and in any quantity, was never granted to applicant nor was authority conferred for the transportation of any commodity to any point located off the highway between termini on the eleven authorized routes.

It appears from the testimony of F. H. Asbury, President of applicant corporation, that it has been his understanding that the certificate possessed by his company did not limit commodities or the volume of same, nor limit operation to points off the highway and between termini on the routes specifically authorized.

The term "oil well supplies," same being one of the items authorized by the certificate, covers a variety of commodities which may be used in connection with the establishment or dismantling of an oil well, including provisions for labor while so employed in any specific oil well field, when such field is located at the terminus or at any intermediate point along the highway on any of the eleven routes as heretofore specifically authorized.

It does not include the transportation of groceries and articles of general merchandise not directly associated with the construction or dismantling of an oil well, nor does it include the transportation of gasoline from oil fields, wells or refineries to gas stations or points of storage, or sale of such commodity to the public, nor does it include the transportation of any commodities in less than truckload lots when such commodities are not reasonably included within the term "oil well supplies," in truckload lots as authorized by the existing certificate.

It is a part of the record as contained by this witness' testimony that a certificate is sought enabling applicant to continue the business that was being conducted at the time of the filing of the application.

The determination of the Commission, after public hearings, was that public convenience and necessity required the establishment of an "on call" truck service over the specific routes and intermediate points on such routes in truckload lots with a minimum load of 4000 pounds on the specific commodities of oil well supplies, heavy machinery, pipe, steel and tanks.

The transportation of any other commodities by applicant, or in any manner other than authorized by the existing certificate is not permissible or legal under the certificate heretofore granted. Should applicant desire to expand the certificate to cover all commodities, or to serve points any distance on either side of the main highway on the routes specifically authorized, or to reduce the minimum quantity to less than 4000 pounds, as at present authorized, application should be made for a certificate of public convenience and necessity, said application to set forth in detail, and in accordance with the requirements of the Commission and the statutory law, the exact service proposed and the intermediate and off main highway points proposed to be served.

We are of the opinion and hereby conclude that as the Commission, as requested in the supplemental application, has in the foregoing recital interpreted its opinion and order in Decision No.19067, on Application No.10148, as decided December 1, 1927, that this supplemental application should be denied.

ORDER

Public hearings having been held upon the above entitled supplemental application, the Commission being now fully advised and of the opinion that the foregoing opinion, which precedes this order, fully sets forth its interpretation of the opinion and

order as contained in Decision No.19067, as decided December 1, 1927,

IT IS HEREBY ORDERED that the opinion which precedes this order fully sets forth this Commission's interpretation of the opinion and order as contained in Decision No.19067, as decided December 1, 1927, and

IT IS HEREBY FURTHER ORDERED that as to all other matters contained in the supplemental application herein, said application be and the same hereby is denied.

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

Dated at San Francisco, California, this 9th day of March, 1931.

C. J. Senner
Leon J. Whelan
W. A. Cunn
W. B. Lavin
Fred G. Stewart
COMMISSIONERS.