

Decision No. 23537.

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of MACK HENSON for certificate of public convenience and necessity to operate auto truck service for the transportation of freight between Los Angeles, and Westmorland, Calipatria, Brawley, Imperial, El Centro, Holtville, Calexico and points intermediate between Westmorland and Calexico.

ORIGINAL

Application No. 16386

In the Matter of the Application of PIONEER TRANSFER COMPANY OF CALEXICO, for certificate of public convenience and necessity to operate auto truck service for the transportation of freight between Los Angeles Harbor, Los Angeles, on the one hand, and Westmorland, Calipatria, Brawley, Imperial, El Centro, Holtville, Calexico and points intermediate between Westmorland, Calexico and Holtville on the other hand.

Application No. 16489

In the Matter of the Application of (1) C. H. McCARTY and ERNEST SMITH, a co-partnership, for certificate of public convenience and necessity to operate a (2) freight transportation service as a common carrier between Imperial Valley Points and Los Angeles Harbor.

Application No. 16942

Geo. W. Rochester and L. W. Burdick, for Applicant in Application No. 16942.  
 E. W. Hobbs, for Southern Pacific Company, Protestant.  
 R. C. Bliss, for Pacific Motor Transport Company, Protestant.  
 Wm. F. Brooks, for Atchison, Topeka & Santa Fe Railway Company, Protestant.  
 Hugh Gordon, for Imperial Valley-Los Angeles Express, Interested Party.  
 Percy C. Thacker, for Pioneer Truck & Transfer Company, Interested Party.  
 Whitelaw & Whitelaw, by R. B. Whitelaw, for Applicant in Application No. 16386.  
 H. J. Bischoff, for Motor Service Express, Inc., Protestant.  
 C. C. Cunningham, for Applicant in Application No. 16489.

BY THE COMMISSION:

O P I N I O N

In Application No. 16386, Mack Henson requests a cer-

tificate of public convenience and necessity to establish auto truck service for the transportation of freight between Los Angeles and Westmorland, Calipatria, Brawley, Imperial, El Centro, Holtville, Calexico and points intermediate between Westmorland and Calexico. He is at present operating in such territory under the claim that it is a private service.

Application No. 16489, by Pioneer Transfer Company, is in all respects identical with Application No. 16386 as to points to be served, rates, time schedules, etc. This applicant is also performing a private carrier service in the territory.

The application of C. E. McCarty and Ernest Smith, No. 16942, seeks authority to establish automobile service as a common carrier for the transportation of certain named commodities between Imperial Valley points and Los Angeles Harbor, serving a number of intermediates.

A public hearing was held by Examiner Cannon at El Centro on December 2, 1930, and upon the calling of these matters counsel for applicant Henson moved a dismissal without prejudice of Application No. 16386. Pioneer Transfer Company was not represented by counsel, but its manager entered a belated appearance and requested a continuance of Application No. 16489. No effort has since been made by said applicant to revive the application, and the Commission must assume that he does not propose to prosecute it to a final determination. Applications Nos. 16386 and 16489 will therefore be dismissed.

The application of McCarty and Smith (No. 16942) requests authority to transport alfalfa meal, cement, corn, cotton, hay, milo maize, lath, lumber, piling, telephone poles, shingles, shakes and wheat between the Los Angeles Harbor District and Imperial Valley points. The route to be

followed may generally be set out as follows: San Pedro, Long Beach, Los Angeles, Santa Ana, Pasadena, Pomona, Ontario, Riverside, Redlands, Indio, branching at Thermal, one line running to Westmorland, Brawley, El Centro, Calexico and Colorado siding, and the other to Blythe.

Charles H. McCarty, one of the co-partners, testified that over a period of five years last past applicant had rendered the identical service herein proposed, that is to say, transporting the commodities named, in truck-load lots only, between Los Angeles Harbor and Imperial Valley Points. The co-partnership owns and operates ten trucks and thirteen trailers, all of which are available for the proposed service. Deliveries are made to any point designated by shipper or consignee, including delivery direct to the yard or job of the consumer, when so desired. As to frequency of operation, the witness stated that trips were made daily, although no regular schedule is maintained, the operation being governed entirely by the quantity of freight offered. Within the limitations of the list of commodities above enumerated, applicant accepts all business offered, provided each consignment constitutes at least a full truck or trailer load. Upon cross examination, witness stated that the applicant had no intention of consolidating a number of small shipments in order to make up a truck load. Applicant maintains offices at San Pedro and Wilmington, and also at Brawley. Estimating the number of customers, the witness fixed the number in and about Brawley at six, Calexico one, El Centro six, and approximately twenty-five others. For such customers applicants haul principally hay and grain out of the Valley.

Several public witnesses were called by applicant.

Two of these were engaged in the lumber business at Brawley and testified that they had used the service of applicant for several years and had found it very satisfactory, and indispensable in their particular lines. They prefer truck rather than rail service because lumber is delivered in their yards, or directly on the job, a service which the railroads cannot give. The manager of a lumber company in Beverly Hills, shipping its product into Valley points, testified that the service of applicant was entirely satisfactory. A Los Angeles concern, engaged in the manufacture and sale of telegraph<sup>and telephone</sup>/poles, piling, and lumber for bridges, testified through its manager that they had used the service of applicant for the past three years and had found it satisfactory in all respects and quite necessary in their business. Their experience also had been that trucks more adequately serve their requirements than rail, in that there is effected a material saving in time, expense and re-handling. The final witness was the representative of a company dealing in cotton, with headquarters at Glendale. They had used the service of applicant for the shipment of cotton out of the Valley to shipside at San Pedro, and in the transportation of some 14,000 bales a year had found such service satisfactory in every way, and peculiarly adapted to their needs.

It should be noted that while the record contains the testimony of a witness from Beverly Hills, and another from Glendale, both convincingly testifying in favor of the application, nevertheless applicant does not ask to serve these communities, and the Commission, in the order herewith cannot grant him authority so to do. Nowhere in the application, or in the accompanying tariff schedule, is any mention made of Glendale or Beverly Hills, and we must assume that applicant does not intend to further serve these points.

No affirmative testimony was offered by any of the protestants, other than a general reference by each of them to their tariffs and time schedules on file with the Commission.

We are of the opinion, from a careful consideration of the evidence herein, and find as a fact, that public convenience and necessity require the operation as a common carrier of the service now rendered by applicant as a private carrier, and that the application should be granted subject to the restrictions hereinafter set forth in the order.

C. E. McCarty and Ernest Smith, co-partners, are 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 proceeding, and the matter having been submitted,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by C. E. McCarty and Ernest Smith, co-partners, of an auto truck service for the transportation, in truck-load lots only, of alfalfa meal, cement, corn, cotton, hay, milo maize,

lath, lumber, piling, telephone poles treated with creosote and paint and untreated, shingles, shakes and wheat between Winterhaven, Bard, Colorado Siding, Holtville, Calexico, El Centro, Brawley, Imperial, Calipatria, Coachella, Indio, Blythe and Thermal only, on the one hand, and El Monte, Redlands, Riverside, Pomona, Ontario, Chino, Pasadena, San Gabriel, Eynos, Clearwater, Downey, Garden Grove, Santa Ana, Anaheim, Fullerton, Cypress, Norwalk, Long Beach, Los Angeles, Los Angeles Harbor, Wilmington and San Pedro only, on the other hand, over and along regular routes via the following communities: Long Beach, Norwalk, Cypress, Fullerton, Anaheim, Santa Ana, Garden Grove, Downey, Clearwater, Eynos, San Gabriel, Pasadena, Chino, Ontario, Pomona, Riverside, Redlands and El Monte, provided that no local service may be given between any of the above named points.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such service be and the same is hereby granted to said McCarty and Smith subject to the following conditions:

1. Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicants shall immediately prepare and file a map properly and satisfactorily drawn to scale showing the routes by name over which applicant is herein authorized to operate including therein all points authorized herein to be served.
3. Applicants 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, insofar as they conform to the certificate herein granted.
4. Applicants 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.

5. 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.
6. No vehicle may be operated by applicants herein unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

IT IS HEREBY FURTHER ORDERED that Applications Nos. 16386 and 16489 be and the same are hereby dismissed.

Dated at San Francisco, California, this 23<sup>rd</sup> day of March, 1931.

C. Severy  
Leon Whitney  
W. J. Curran  
M. B. Harris  
Fred G. Stewart  
Commissioners.