

Decision No. 23595.

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of OAKLAND-SAN JOSE TRANSPORTATION CO. for 1. Certificate of Public Convenience and Necessity authorizing the operation of an automobile truck line as a common carrier of freight between (a) Oakland, Alameda, Emeryville, Piedmont, Berkeley and intermediate points and between San Jose and Santa Clara and intermediate points; (b) Between San Jose, Santa Clara and Livermore and intermediate points; (c) Between Livermore and Hayward and intermediate points via Santa Rita and for; (2) An order consolidating the operating rights and routes of Oakland-San Jose Transportation Company and the (3) Issuance of a Certificate of Public Convenience and Necessity authorizing Oakland-San Jose Transportation Company to operate its automobile trucking service for the carriage of freight as enlarged and extended, as a unified system under a single operating right, in lieu of the operating rights herein and heretofore granted with the right to serve all points within one (1) mile on either side of the highways traversed.

ORIGINAL

Application No. 16707

- T. C. McGettigan for applicant.  
 A. S. Hutchinson and Geo. E. Walk, for Western Pacific Railroad Company, Protestant.  
 H. E. Ashton, for Peerless Stages, Interested Party.  
 Edward Stern, for Railway Express Agency, Inc., Protestant.  
 W. S. Johnson, for Southern Pacific Company and Southern Pacific Motor Transport Company, Protestants.  
 R. L. Vaughan, for Merchants Express and Draying Company and Consolidated Motor Transport Company, Interested Parties.

BY THE COMMISSION:

O P I N I O N

Applicant is a corporation engaged in the operation of an automobile trucking service over two separate and distinct routes, namely: Between Oakland and San Jose and intermediate

points and between San Jose and Livermore and Hayward and intermediate points. The purpose of the present application is to acquire a single certificate in lieu of all others heretofore granted or acquired, unifying and consolidating these two operating rights into one. In addition thereto, applicant seeks an extension of its present operating right between Oakland and San Jose so as to include the City of Santa Clara; and also to serve certain points in the territories surrounding the Oakland terminus.

Public hearings were held by Examiner Cannon at Oakland and San Francisco and the matter was duly submitted.

The operating rights presently enjoyed by applicant were acquired in the following manner: In 1919 C. F. Nissen and A. C. Woodard, co-partners, operating under the fictitious name of Oakland-San Jose Transportation Co. were granted a certificate to operate an automobile truck line as a common carrier of freight and express between Oakland and San Jose and intermediate points (Decision No. 6758). The operation was over the route, Oakland, San Leandro, Hayward, Niles, Centerville, Irvington, Warm Springs, Milpitas, Wayne and San Jose. In 1920 Woodard acquired the interest of Nissen in the above operating right, which, for brevity, may be referred to as the Woodard right.

By Decision No. 7371, J. G. Shaw and G. F. Beard, co-partners, operating as Service Motor Transportation Company, were granted a certificate to operate an automobile truck line for the transportation of freight only, between San Jose and Livermore and Hayward and the intermediate points, which may be designated as the Service right.

Subsequently Woodard was granted authority by the Commission (Decision No. 12058), to acquire the Shaw-Beard operating right next above referred to. The right so transferred was over and along the following route: San Jose, Milpitas, Warm Springs, Mission San Jose, Irvington, Centerville, Newark, Niles, Decoto, Alvarado, Mt. Eden, Hayward, Sunol, Pleasanton, Santa Rita and Livermore. One of the conditions of the transfer was that the Service right was not in any way to be linked up with the Woodard right and that the two services were thenceforth to be operated exactly as they had theretofore been operated by their respective owners.

In 1923, Woodard, still doing business under the name of Oakland-San Jose Transportation Co. requested and was granted authority to establish through rates covering his Oakland-Niles and Niles-Livermore operations with the San Jose-Livermore service. The order (Decision No. 12751) provided that "Applicant shall not operate through truck service between Oakland and Livermore unless such through operation is authorized by the Railroad Commission under a separate formal proceeding." Accordingly, shipments from Oakland to Livermore were required to be transferred at Niles to the San Jose-Livermore truck. Following this, Woodard joined with several bay city carriers in an application requesting authority for the establishment of through routes and joint rates for the transportation of freight between San Francisco and San Leandro and Wayne and intermediate points; also between San Francisco and Sunol and Livermore. This application was granted (Decision No. 14467) subject to the condition that it in no way authorized the establishment by applicant of a through truck service between Oakland and Livermore.

The final decision of the Commission in this series

establishing the present operating rights of applicant Woodard is found in Decision No. 18128 wherein Woodard is given authority to transfer to Oakland-San Jose Transportation Co. the properties and operative rights owned by him to which reference has been hereinabove generally made.

We have with some degree of particularity set forth the various steps in the development of applicant's existing operating rights so that a comprehensive view may be had of the transportation operation now effective in the territory.

The Woodard right is now conducted between Oakland and San Jose and intermediate points via San Leandro, Hayward, Niles, Centerville, Irvington, Warm Springs, Milpitas and Wayne. The Service right is conducted between San Jose and Livermore and Hayward and intermediate points via Milpitas, Warm Springs, Mission San Jose, Irvington, Centerville, Newark, Niles, Decoto, Alvarado, Mt. Eden, Hayward, Sunol, Pleasanton and Santa Rita.

Applicant requests a single certificate embracing substantially its present operations, with the following enlargements thereof:

1. To serve between Alameda, Berkeley, Emeryville, Piedmont, Oakland, San Jose and Santa Clara.
2. To extend service to Santa Clara.
3. To extend the San Jose-Livermore service to Hayward via Santa Rita and Dublin.
4. To serve points one mile on either side of the highway.
5. To unify and consolidate all existing operating rights, and rights which may be acquired under this application, into one operating right.

The record contains the testimony of several witnesses who testified as to the need for the extended service as well as for the consolidation of the separate operating rights. Three Emeryville witnesses testified that they regularly shipped goods to points on applicant's route including Hayward, Livermore, San Jose and Santa Clara. The advantages of the Woodard service which they had used, and are now using, are the store-door pick-up and delivery feature, the promptness and speed of deliveries and the freedom from repeated handling and re-handling of shipments.

Five witnesses from Oakland and one from Berkeley were called, two of them being engaged in the wholesale grocery business, one in dried fruits, one in pumps, one in meat packing and one in glass and glass products. There is very little variation in the testimony of these witnesses. They have all used the service of applicant over a period of years, have found it satisfactory, and would continue to use it, particularly to the points Livermore, Pleasanton, San Jose and Santa Clara. One of these witnesses testified that the so-called contract carriers were not dependable, and rail service was unsatisfactory.

A Livermore witness, engaged in the electrical supply business, testified that he frequently used applicant's service in shipments to and from San Francisco and Oakland, and was well satisfied with the service and rates. He did not believe the transfer from one truck to another at Niles was good transportation practice. The manager of a country club near Pleasanton used the service for the shipment of mechanical supplies from the bay cities and found it satisfactory in every respect except for the transfer from truck to truck at Niles.

San Jose and Santa Clara witnesses testified generally that they would continue to use applicant's service for the

transportation of their products to Oakland and the surrounding communities mentioned in this application. They find rail service unsatisfactory and prefer the trucks of applicant. Santa Clara shippers are obliged to truck their goods to San Jose and there turn them over to applicant.

Applicant Woodard, testifying in his own behalf, admitted that he is now operating in violation of his certificate in that he does not transfer shipments at Niles but operates a through service between Oakland and Livermore. This places some of the witnesses in the anomalous position of asking for service which they are now getting, and it is not clear that these witnesses had knowledge of such violation. The operation over the Dublin Canyon route, via Santa Rita, to Hayward is intended to be mainly on the return trip. Service to Berkeley, Piedmont, Alameda and Emeryville will be on the same basis as to Oakland with respect to rates, pick-ups and deliveries, and Santa Clara business would be similarly controlled by San Jose rates and rules.

A field representative of applicant testified that he had had frequent requests from shippers for the extension of service into the points requested. No change in the present method of operation between San Jose and Livermore is sought, nor is it the design of applicant to render local service between Santa Clara and San Jose, nor between Oakland and Alameda, Berkeley, Piedmont and Emeryville.

Protestants Western Pacific Railroad Company, Southern Pacific Company, Pacific Motor Transport Company and Railway Express Agency, Inc. called operating witnesses who testified as to the service rendered by each of said protestants in the territory affected by the application. Exhibits were filed setting forth a comparison of tariffs and time schedules of the

rail lines with those proposed by the truck line, the purpose presumably being to show that the territory is adequately served by the railroad.

We do not believe the transportation service of applicant as authorized by the Commission in previous orders is economically sound from an operating standpoint at the present time. Whatever reasons may have justified a transfer at Niles of all Livermore and Pleasanton shipments from the Oakland-San Jose trucks to the San Jose-Livermore trucks, under a through rate arrangement, good operating practice does not warrant the continuance of that transfer under the circumstances. True, the applicant testified that he had, without authority, abandoned the practice of transferring shipments at Niles and to that extent was guilty of a willful violation of his certificate. The unauthorized routing of through trucks from Oakland to Livermore is of itself sufficient justification for denying to the applicant the certificate desired, were it not that the record shows that there is a substantial demand for a service of that character which the applicant is in a position to supply. Without in any way condoning the violation, we believe the necessities and convenience of the public more than outweigh the infraction of which applicant is guilty. No complaint has ever been made against applicant by other carriers, the Commission had no knowledge of such violation, and in justice to applicant's counsel it should be said that the admission of his client appeared to come as a surprise.

Aside from the extensions of service requested as to the termini Oakland and San Jose, the chief aim of the application appears to be a simplification of operating rights and the removal of a restriction which is illogical in its operation. We do not believe there is much merit in the protests. The service is already established and has been satisfactorily and

adequately rendered over a period of years. Primarily, the question is not one of rates or time schedules or frequency of service, but rather a readjustment that will unquestionably result in more efficient service to the public. For that reason we believe, and so find, that the application should be granted, and the order following will so provide.

#### O R D E R

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 Oakland-San Jose Transportation Co., a corporation, of an automotive truck service for the transportation of freight between Alameda, Berkeley, Emeryville, Piedmont, Oakland, San Jose and Santa Clara and all intermediate points over and along the following routes:

- (a) From Alameda, Berkeley, Emeryville, Piedmont and Oakland, via East Fourteenth Street to San Leandro over the main highway to San Lorenzo, thence via the main highway to Mt. Eden, Alvarado, Midway, Centerville, by divergence to Newark, thence to Irvington, Warm Springs, Milpitas, Wayne, San Jose and Santa Clara;
- (b) Also from San Leandro over and along the main highway to Hayward, Decoto, Niles, Mission San Jose, Warm Springs and thence to San Jose via Milpitas



and Wayne, thence to Santa Clara;

- (c) Also over main highways between Irvington and Mission San Jose, Centerville, and Niles, Alvarado and Decoto, Mt. Eden and Hayward, San Lorenzo and Hayward.
- (d) Also over main highways between Niles and Livermore via Sunol and Pleasanton; also between Livermore and Hayward via Santa Rita and Dublin; also over the main highway between Santa Rita and Pleasanton;
- (e) And in connection with operations over said highway routes to serve points one (1) mile on either side of highways traversed, provided, that no local service may be given between Alameda, Berkeley, Emeryville, Piedmont and Oakland, nor between San Jose and Santa Clara; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for the above service be and the same hereby is granted to said Oakland-San Jose Transportation Co., a corporation, in lieu of all certificates heretofore granted to or acquired by such corporation, which certificates are hereby revoked, subject to the following conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from 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 attached to the 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 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.

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

Dated at San Francisco, California, this 13<sup>th</sup> day of April, 1931.

Cl. Seavey  
Leon Whitely  
W. J. C.  
M. B. Harris  
Frank G. Stewart  
Commissioners.