

Decision No. 23738

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 T. R. JAKEWAY for a certificate of
 public convenience and necessity to
 operate an automobile trucking service
 for the transportation of farm products
 between Santa Margarita Ranch on the
 one hand and Los Angeles and Los Angeles
 Harbor on the other hand, serving inter-
 mediate points including Las Flores,
 San Onofre, San Mateo, Serra, San Juan
 Capistrano, Irvine Station, Irvine Ranch,
 Costa Mesa and Santa Ana, with a return
 movement of farm supplies and necessities
 from Los Angeles and Los Angeles Harbor
 and the points above named; and for the
 transportation of beans between Santa
 Margarita Ranch and Oceanside.

) Application
) No. 17228

ORIGINAL

Rex W. Boston and F. A. Jones, for Applicant.

E. J. Bischoff, for Rice Transportation Company and
 for Los Angeles-Newport Freight Line, Protestants.

William F. Brooks and E. T. Lucey, for The Atchison,
 Topeka & Santa Fe Railway Company, Protestant.

J. W. Puckett, for Puckett Freight Lines, Ltd., Protestant.

STEVENOT, Commissioner -

OPINION

The above entitled and numbered proceeding, as amended,
 is an application by T. R. Jakeway for a certificate of public
 convenience and necessity to operate an auto trucking service
 for the transportation of farm products and farm necessities
 and supplies between Santa Margarita ranch, located in San Diego
 County, on the one hand, and the City of Los Angeles proper and
 steamship wharves and docks, located at Los Angeles harbor
 (Wilmington and San Pedro), on the other hand, via both inland
 and coast routes. He also proposes to serve to and from
 intermediate points including Las Flores, San Onofre, San Mateo,
 Serra, San Juan Capistrano, Irvine Station, Irvine Ranch, Costa
 Mesa, Santa Ana, Dana Point and Laguna Beach to and from farms

and ranches located in territory contiguous to three main routes and two branch routes set forth in the application herein. Applicant also proposes to transport beans only between Santa Margarita Ranch and Oceanside.

Applicant proposes to charge rates and to operate in accordance with the tariffs and rules and regulations shown in amended Exhibit A. Exhibit B, as amended, shows a scheduled service, daily except Sundays and holidays between Santa Margarita ranch and Los Angeles and intermediate points, the service between all points in the territory sought to be served and Los Angeles harbor, (Wilmington and San Pedro) to be on call only. The routes proposed to be followed are shown on a map marked Exhibit C. All exhibits are attached to the application herein and made a part thereof.

Public hearings were held in Los Angeles, evidence taken and an order of submission made. The matter is now ready for decision.

Applicant Jakeway testified in his own behalf. His testimony, epitomized, and which was supported by the testimony of ten shippers, was to the effect that a service such as he proposes, a highly specialized service, is essential to meet the present day needs of shippers. A considerable amount of fertilizer destined to the territory proposed to be served, coming from the East Coast of the United States and foreign countries, moves by boat to Los Angeles harbor, also pipe and other farm supplies formerly distributed from warehouses located in Los Angeles likewise move by boat to Los Angeles harbor, necessitating a direct motor truck service between Los Angeles harbor and the territory traversed by his proposed routes. There is also a considerable movement of dry beans, in sacks, between the areas of production within this territory and Los Angeles harbor where the beans are loaded on boats for shipment by water to Eastern ports. Due to modern refrigeration methods now in use on steamships, it is also possible for growers within this area to ship

fresh vegetables and farm produce to markets located in San Francisco and Seattle. At present the traffic moving to these markets is usually trucked to San Diego for shipment on the boats for the reason that there is no direct truck service between the producing areas and Los Angeles harbor. With a service such as he proposes, growers within this territory would be able to connect with the boats in Los Angeles harbor instead of at San Diego, thereby saving one day in transit of the produce on the water. This improvement in service would tend to materially increase shipments of this nature with a beneficial result to the growers. A highly specialized and extremely flexible service is necessary as areas of production are constantly changing from year to year. The time of arrival of produce at the Los Angeles market is highly important to growers due to price fluctuations and market conditions. Jakeway said he, at all times, kept closely in touch with market conditions and by reason of this knowledge was able to give the shippers a service of great value to them.

Applicant further testified that he is now and has been for several years last past engaged, under a certificate of public convenience and necessity granted him by the Railroad Commission, in the business of operating a common carrier auto truck service for the transportation of farm products between Santa Margarita ranch on the one hand, and Los Angeles on the other hand, with a return haul of farm necessities and supplies, serving intermediate points, including Las Flores, San Onofre and San Mateo. He has also served San Juan Capistrano and points within a radius of ten miles on either side of the highway, and, under his certificate, has transported beans only between Santa Margarita ranch and Oceanside.

Witness Jakeway frankly admitted that he had operated beyond the limits of his certificate, saying that he had filed the instant application, covering the enlarged service, on the advice of his counsel. He said that he had always believed he could

continue to perform the service he had established under the Crittenden Act (subsequently declared unconstitutional), which act exempted from the necessity of obtaining a certificate so-called farm haulers, until notified he was operating illegally. He had never been notified nor complained against. He said further that he had performed considerable trucking service as a general truckman, picking up and delivering freight at many points not covered by his certificate, all in response to demands from shippers in the territory. He is now using four trucks and is financially able to obtain such other equipment as may be necessary.

All of Jakeway's supporting witnesses, some of them representing thousands of acres, some but a few hundred and others less, strongly urged the granting of the certificate sought, declaring that he was a dependable operator, fully awake to all their needs and because of his availability, of invaluable assistance to them in the marketing of their crops and the transportation of their supplies. They gave it as their opinion that existing carriers, other than Jakeway, did not adequately serve them.

The application was opposed by Rice Transportation Company, Los Angeles-Newport Freight Line, Puckett Freight Lines, Ltd., and The Atchison, Topeka & Santa Fe Railway. They presented the testimony of fourteen witnesses, (Jakeway being one), three of whom are officials of the protesting carriers, namely, W.T. Quirk for The Atchison, Topeka & Santa Fe Railway, R. E. Mc Connell for the Rice Transportation Company, and J. W. Cawley for the Los Angeles-Newport Freight Line. Quirk testified as to the service given by the rail company between points proposed to be served by Jakeway, Mc Connell described the service and operations of the Rice Transportation Company and affiliated lines, and Cawley that of the Los Angeles-Newport Freight Line, with particular reference on the part of the protestant truck lines, to equipment available, service given, the territory served and the ability of protestants to provide such additional service as may be necessary. That the

protestants' truck lines had specialized in the hauling of produce was the burden of considerable of the testimony offered by their representatives and each claimed practically that there was no service offered by applicant Jakeway which they had not or could not duplicate readily. The public witnesses testifying for protesting truck lines, ten in number, each testified as to the service they had received. Each was satisfied with the service.

Carefully reviewing all the testimony in this proceeding, I conclude and find as a fact that the service proposed by Jakeway, subject to the limitations imposed by the order herein, is required by public convenience and necessity. True, it appears from the record that applicant Jakeway has enlarged upon a certificated right without proper authority, but it does not appear that he did so wilfully or with any intent of doing any more than meet the needs of the territory he served under a certificate which does not permit him to give the service really necessary and in recent years demanded. While I do not believe unlawful operation should be condoned by this Commission, I am of the opinion that the fullest consideration of all the facts brought out at the hearings justifies a conclusion that applicant Jakeway's apparent misunderstanding of his operating rights should be considered leniently.

T. R. Jakeway 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.

O R D E R

Public hearings having been held in the above entitled matter and the Commission being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity requires the operation by T. R. Jakeway of an auto trucking service for the transportation of beans only between Santa Margarita ranch and Oceanside, and farm products and necessities and supplies between Santa Margarita ranch on the one hand, and Los Angeles and Los Angeles harbor (San Pedro and Wilmington), on the other, serving also intermediate points, including among the latter Laguna Beach, Dana Point, Santa Ana, Costa Mesa, Irvine Ranch, Irvine Station, San Juan Capistrano, Serra, San Mateo, San Onofre and Las Flores, the operation between Santa Margarita ranch and Los Angeles and Los Angeles harbor to be conducted over and along the following routes:

ROUTE 1.

Between Santa Margarita ranch and Los Angeles via U. S. Highway 101; from Santa Margarita ranch to First Street in Santa Ana, thence west on First Street, thence north on Fifth Street, thence west on Fifth Street to Bristol Avenue, thence north on Bristol Avenue to 17th Street, thence west on 17th Street to Stanton Avenue, thence north on Stanton Avenue and Grand Avenue to Buena Park, thence to Los Angeles through Norwalk and Santa Fe Springs, via Telegraph Road and East Ninth Street.

ROUTE 2.

Between Santa Margarita ranch and Los Angeles harbor via U. S. Highway 101 between Santa Margarita ranch and Serra, thence via (Coast Route) Roosevelt Highway to Los Angeles harbor.

ROUTE 3.

Between Santa Ana and Los Angeles harbor via 17th Street in Santa Ana to Euclid Avenue, thence via Euclid Avenue to Garden Grove, thence via Ocean Avenue and Anaheim Street to Los Angeles harbor.

BRANCH ROUTE A

Between Laguna Beach and Irvine Station via Laguna Canyon Road.

BRANCH ROUTE B

Between Newport Beach and Santa Ana via Newport Road and Main Street in Santa Ana,

with the right to serve, in connection with Route No.1, all points within a distance of ten (10) miles on either side of the highway between Santa Margarita ranch and Santa Ana; in connection with Route No.2, all points within ten (10) miles on either side of the highway between Santa Margarita ranch and Newport Beach and all points within a distance of three (3) miles north of the highway between the junction of Newport Road and Roosevelt highway and the junction of Santa Ana River and Roosevelt highway; in connection with Branch Route A, all points within a distance of two (2) miles on either side of the highway and connecting with Route No.1 at Irvine Station; in connection with Branch Route B, serve all points within a distance of three (3) miles on either side of the highway between Newport Beach and Santa Ana and connecting with one (1) and three (3) in Santa Ana.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for a consolidated service over said routes be, and the same is hereby granted to T. R. Jakeway, subject to the following restrictions:

a- That no service shall be performed locally between Los Angeles and Los Angeles harbor and intermediate points, nor between Santa Ana and Los Angeles harbor and intermediate points.

b- That no freight may be transported except such as originates at or is destined to farms within the territory traversed by the three main routes and two branch routes described above, this restriction applying particularly to the transportation of general merchandise not destined to or originating at farms.

IT IS HEREBY FURTHER ORDERED that the certificate herein granted shall be issued, subject to the following conditions:

1- That applicant shall file within a period of not to exceed fifteen (15) days an acceptance of the certificate herein granted, which acceptance shall contain a statement that the applicant thoroughly understands that he is to transport only farm produce and necessities and supplies within the limitations of the certificate herein granted, and that it is granted in lieu of the certificate of public convenience and necessity heretofore granted to him by Railroad Commission Decision No. 15530, issued on Application No. 11166, under date of October 15, 1926, which certificate is hereby revoked and annulled.

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 amended exhibit attached to the application, insofar as they conform to the certificate herein granted, and which shall supersede the tariff now on file in applicant's name.

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 him under a contract or agreement on a basis satisfactory to the Railroad Commission.

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

The above Opinion and Order are hereby approved and adopted as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10th day of June, 1931.

C. Leary
Leon Aubrey
W. J. ...
W. B. ...
Fred G. ...
COMMISSIONERS.