

Decision No. 25795

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MOTOR SERVICE EXPRESS, a corporation,
and HEMET TRANSFER & STORAGE COMPANY,

Complainants,

vs.

AMOS CHURCHILL,

Defendant.

Case No.3033

ORIGINAL

In the Matter of the Application of
AMOS CHURCHILL to operate an automobile
truck service between Hemet and San
Jacinto on the one hand and Los
Angeles, Los Angeles Harbor, Ontario,
Long Beach, Santa Ana, Riverside,
Colton, Pomona and San Bernardino on
the other hand for certain commodities.

Amended
Application No.17287

H. J. Bischoff, for Complainants in Case No.3033;
for Motor Service Express and for Hemet Transfer
& Storage Company, protestants in Application No.17287.

Phil Jacobson, for Defendant in Case No.3033; for
applicant in Application No.17287.

E. T. Lucey, for The Atchison, Topeka & Santa Fe
Railway Company, protestant in Application No.17287.

M. Thompson, for Railway Express Agency, Inc.,
interested party in Application No.17287.

BY THE COMMISSION -

OPINION

Case No.3033 is a complaint by Motor Service Express, a
corporation, and Hemet Transfer & Storage Company, which is
owned and operated by Motor Service Express, charging that
Amos Churchill is operating a common carrier auto trucking
service between Hemet and San Jacinto on the one hand, and
Riverside, San Bernardino, Ontario, Pomona, Los Angeles and
Los Angeles Harbor on the other, in violation of Chapter 213,

Statutes of 1917, and effective amendments thereto. The Commission is asked to issue its order directing defendant Churchill to cease and desist from such operations. In his formal answer to said complaint Defendant Churchill denies that he is operating in violation of the law, admitting, however, that he is operating a general trucking service, transporting property between various points in California.

Application No.17287, as amended, is an application by Amos Churchill, defendant in Case No.3033, for a certificate of public convenience and necessity authorizing him to operate an on call auto trucking service for the transportation of certain commodities, in two ton lots or more, between a point near Hemet and San Jacinto on the one hand, and Los Angeles and Los Angeles Harbor on the other; also between said point and Pomona, Colton, San Bernardino and Riverside and Ontario and Santa Ana and Long Beach, on the other hand. The service is proposed to be operated over and along routes fully set forth in the amendment to the application, (Exhibit B). He also seeks authority to pick up and deliver at all points within a distance of six (6) miles on either side of the highway traversed from Foothill road and San Jacinto River (north of San Jacinto) to the intersection of Florida avenue and Patterson avenue. He does not propose to serve to or from Gilman Hot Springs, Soboba or Idylwild or between said points or between Los Angeles proper and Los Angeles Harbor, locally.

The rates proposed to be charged by applicant Churchill, the rules and regulations under which he proposes to operate and the equipment he proposes to use are set forth in his amended application.

Public hearings on the above entitled matters were held by Examiner Kennedy at Los Angeles and at Hemet. The matters were consolidated for hearing, evidence heard and an order of submission made. It is now ready for decision.

The application of Churchill was opposed by Motor Service Express and Hemet Transfer & Storage Company and The Atchison, Topeka & Santa Fe Railway Company. The Santa Fe presented no evidence. M. Thompson appeared for Railway Express Agency, Inc. as an interested party.

Some twenty five witnesses were examined during the course of the proceedings. Some affirmative testimony for applicant was presented by stipulation. The witnesses included, among others, orange, fruit and vegetable growers, dealers in feed, seed and grain, lumber and building supplies, oilmen, packinghouse and cannery operators, stockmen, a dairyman and a dealer in hardware and agricultural implements.

Witness Boyez, a user of the Churchill service, is manager of the Little Lake Mutual Orchard Association which has a membership of thirty five (35). He is also a grower. H. E. Mc Intyre, another Churchill customer, is manager of the Hemet Orange Growers Association (thirty five (35) members). Another witness urging continuation of the Churchill service was Ray R. Bell, manager of the California Co-operative Canneries at Hemet. It has a membership of thirty five or forty fruit growers.

Applicant Churchill testified that he had been engaged in the trucking business for a number of year (10 or 12), meeting the demands of growers and business men in Hemet and contiguous territory and transporting goods for them to points along the coast as far north as Ventura and into the Imperial and San Joaquin Valleys, going when and where they desired. He said that he always considered his service was that of a general truckman and not within the purview of the Auto Stage and Truck Transportation Act, which requires that a certificate be obtained for a common carrier service between fixed points or over a regular route. He said his operation had never been complained against by existing carriers until the complaint in Case No. 3033

had been filed. With the filing of said complaint he sought legal advice and determined to seek a certificate authorizing operation restricted to certain points and routes, filing Application No.17287. He named among his customers more than a score of shippers and fifteen of them testified in his behalf. One of his witnesses was the Secretary-Treasurer of the Fruitvale Farm Center, who presented a resolution adopted by his organization endorsing the Churchill application. As did the other witnesses for applicant, he spoke in laudatory terms of the Churchill service. Mr. Churchill said he now had a fleet of light trucks and five trailers, practically all paid for, and was in a position to obtain more equipment.

Many of the witnesses for applicant Churchill testified that they also used the transportation facilities offered by Motor Service Express under the various names under which it serves the district, receiving, as a rule, satisfactory service. They also use The Santa Fe rail service.

Of the eight witnesses testifying in behalf of the complainants and protestants, all expressed satisfaction with the service of the complaining companies, which are commonly owned.

Among the witnesses produced by Motor Service Express were Mark Worden, of the Milk Producers Association, who testified to the quality of service rendered by Motor Service Express in the handling of fresh milk to the creameries in Los Angeles, and Paul Bothener, one of the largest fruit growers in the community, whose testimony related to the movement of fruit to the packing houses and the character of men employed in giving the public service. Similar testimony was given by Maure K. Hurt of the Hemet Packing Company. J. Glenn Brubaker, superintendent and secretary of the Hemet Packing Company, testified as to the large tonnage that Motor Service Express is able to move from the packing house to Los Angeles and the Harbor on short notice.

It appears from the record that the pick-up and delivery feature of this service in the vicinity of Hemet is largely performed by a non-certificated carrier, United Trucking Service, a subsidiary of Motor Service Express which, in the language of counsel for complainants, conducts a "Ben Moore operation," in other words, a service not between fixed points or over a regular route. Both services are jointly managed by a resident manager in the Hemet territory. Thus, by a combination of a certificated and non-certificated service, Motor Service Express gives practically the same service (part of it scheduled) that applicant Churchill proposes in his application. Motor Service Express presented testimony showing ability to meet all equipment and service demands.

A comprehensive study of the record in this proceeding shows that Hemet is the center of a farming district. In it are located several packing houses and canneries. The crop report of the district agricultural inspector (Exhibit 3), shows a large acreage producing a varied crop of grain, fruit and vegetables. There is, as a result, a demand for a transportation service, which must be flexible, reliable, dependable, and operated in conformity with the peculiar needs of the district. Such a service, the record shows, has been given by applicant Churchill for several years last past and we, therefore, find as a fact that public convenience and necessity require continuance of the service he has been giving, within, however, the limitations set forth in his application for a certificate of public convenience and necessity. It is obvious from the record that his operations have been of such a nature that the need for certification, under the law, resulted from development of his service from a local trucking service to a service between certain fixed points and over regular routes, both points and routes being established as a result of demands based on public need and the requirements of shippers and receivers of freight in the Hemet district, one of which is a need for a service to and from the Hemet territory and points where are located packing houses and supply bases.

An "on call" service, such as he proposes, will insure the district proposed to be served a service found by practical experience, to be essential.

The complaint charging that applicant Churchill has operated in violation of Chapter 213, Statutes of 1917, will be dismissed.

Amos Churchill 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 matters, evidence heard and an order of submission made and the Commission being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by Amos Churchill of an "on call" common carrier trucking service for the transportation of certain commodities, hereinafter named, in quantities of two (2) tons, or more, between a point at the intersection of Foothill road and San Jacinto River (north of San Jacinto) on the one hand, and Los Angeles and Los Angeles Harbor, on the other hand, also between said point of beginning and Pomona, Colton, Riverside, San Bernardino, Ontario, Santa Ana and Long Beach, on the other hand, over and along the following routes:

Route 1. Commencing at the intersection of Foothill Road and San Jacinto River (north of San Jacinto) thence south on Foothill Road to its intersection with Central Avenue, thence southeasterly along Central Avenue through San Jacinto to Florida Avenue in Hemet, thence westerly on Florida Avenue to its intersection with Ethinac Road through Perris, thence along Riverside Road through Riverside along Eighth Street to Wineville, thence along State Highway and Valley Boulevard to Los Angeles, thence along Alameda Street to Los Angeles Harbor district; serving Riverside, Pomona, Ontario and Los Angeles.

Route 2. Commencing at the intersection of Foothill Road and San Jacinto River (north of San Jacinto) thence south on Foothill Road to its intersection with Central Avenue, thence southeasterly along Central Avenue through San Jacinto to Florida Avenue in Hemet, thence westerly on Florida Avenue to its intersection with Ethinac Road through Perris, thence along Riverside Road to Iowa Avenue, west of the city limits of Riverside, thence along Iowa Avenue through Highgrove serving Colton and San Bernardino.

Route 3. Commencing at the intersection of Foothill Road and San Jacinto River (north of San Jacinto), thence south on Foothill Road to its intersection with Central Avenue, thence southeasterly along Central Avenue through San Jacinto to Florida Avenue in Hemet, thence westerly on Florida Avenue to its intersection with Ethinac Road through Perris, thence along Riverside Road to Riverside, thence along Magnolia Avenue through Corona to Santa Ana Canyon Road to Olive, (diversion when serving Santa Ana from Olive along Orange Avenue to Santa Ana), thence along Center Street to Anaheim to Ocean Boulevard, thence along Ocean Boulevard to Long Beach, thence through Long Beach on Anaheim Road to Los Angeles Harbor District,

with the right to pick up and deliver at all points six (6) miles on either side of the highway traversed between said point of beginning named above and a point at the intersection of Florida Avenue and Patterson Avenue; also to pick up and deliver within the city limits of Ontario, Pomona, Santa Ana, Riverside, Colton, San Bernardino, Long Beach, Wilmington and San Pedro, and in the City of Los Angeles at all points east of Western Avenue.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such a service be, and the same is hereby granted to Amos Churchill, subject to the following restrictions:

a- That no service shall be performed locally between Los Angeles and Los Angeles Harbor, nor locally between any of the other hand points named above.

b- That no service shall be given to or from Gilman Hot Springs, Soboba and Idylwild.

c- That applicant shall limit his service to the transportation of the following commodities:

To and from Los Angeles and Los Angeles Harbor

(1) Canned fruit, (2) Dried fruit, (3) Cannery supplies, (4) Shook, (5) Sugar, (6) Cans, (7) Machinery, (8) Spray Material, (9) Honey, (10) Green fruit, (11) Alfalfa seed, (12) Beans, (13) Potatoes, (14) Onions, (15) Sacked vegetables, (17) Watermelons, (18) Squash, (19) Oranges and (20) Deciduous fruits, (21) Grain and (22) Mixed feeds, (23) Fertilizer, (24) Coke, (25) Furniture and (26) Household goods, (27) Lumber, (28) Building materials, (29) Pipe, (30) Well casing, (31) Tanks, (32) Lubricating oil, (33) Case Goods, (34) Hay, (35) Straw, (36) Livestock, (37) Steel and (38) Iron.

To and from Pomona, Colton, San Bernardino and Riverside

Items No. 19 - 20 - 21 - 22 - 23 - 24 - 28 - 34 - 35 as listed above.

To and from Ontario

Items No. 1 - 2 - 3 - 4 - 5 - 6 - 7 - 8 - 9 - 10 - 21 - 22 - 23 - 24 - 34 - 35 as listed above.

To and from Santa Ana and Long Beach

Items No. 1 - 2 - 3 - 4 - 5 - 6 - 7 - 8 - 9 - 11 - 12 - 21 - 22 - 23 - 24 - 34 - 35.

IT IS HEREBY FURTHER ORDERED that the certificate of public convenience and necessity herein granted is issued 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 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 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 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.

IT IS HEREBY FURTHER ORDERED that the complaint in Case No.3033 be and the same is hereby dismissed.

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 15th day of

June, 1931.

CC January
Leon Wherry
W. J. Lee
W. B. Harris
Frederic G. Stewart
COMMISSIONERS.