

Decision No. 24452.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of
WALTER B. TINDELL for a certificate
of public convenience and necessity
authorizing the operation of motor
vehicles for the transportation of
fresh fish iced in boxes, salted fish
and dried fish between Monterey and
Sacramento and points on the Sacramento
River as far west as Rio Vista, Calif-
ornia, and intermediate points.

ORIGINAL

Application No. 17527.

Louittit, Marceau and Louittit by Thos. S. Louittit,
for Applicant.
W. S. Johnson for Southern Pacific Company,
Protestant.
Edward Stern for Railway Express Agency, Inc.,
Protestant.
Beverly Gibson, Jr., for River Auto Stages,
Protestant.

BY THE COMMISSION:

O P I N I O N

Walter B. Tindell has made application for a certificate of public convenience and necessity to establish motor truck freight service as a common carrier between Monterey and Sacramento and certain intermediate points, and on the Sacramento River as far west as Rio Vista for the transportation of fresh fish, iced in boxes; dried fish and salted fish in containers, and no other commodities. No service is proposed between Monterey and Gustine, Merced County. Applicant proposes to operate over a route via Salinas, San Juan and Hollister. Intermediate points to be served are Gustine, Newman, Crow's Landing, Turlock, Keyes, Ceres, Modesto, Salida, Ripon, Manteca, Stockton, Lodi, Sacramento and the points of Courtland, Walnut Grove, Ryde, Isleton and

Rio Vista on the Sacramento River.

Public hearings thereon were conducted by Examiner Kennedy at Monterey, Stockton and Sacramento, the matter was duly submitted and is now ready for decision.

The testimony shows that applicant has been engaged in the transportation of the commodities he seeks certificate to transport since December 1929, having begun operations under verbal contracts or arrangements with certain shippers and receivers of freight. Just prior to the filing of the application applicant was advised that his business was such as required certificate from this Commission, whereupon the instant application was filed. There is nothing in the record which shows that applicant operated other than in ignorance of the legal requirements and it is clear that when he was advised of his status he sought to comply with his legal duty.

Applicant was supported by four shippers of fresh fish at Monterey and by his customers throughout the entire route and points served. It appears that the shippers of fish from Monterey yield to the instructions of their customers and have used his service largely for this reason. The applicant was supported by testimony of witnesses from Turlock, Modesto, Walnut Grove, Rio Vista, Isleton, Stockton, and Lodi, the majority of them being Japanese. It appears from the testimony of these witnesses that applicant makes delivery of fresh fish in the night-time at their places of business, usually having a key to admit him to the premises; that these deliveries are accomplished shortly before midnight or soon thereafter at points between Gustine and Stockton. This enables the fish dealers to send out their peddling wagons to other points to dispose of the fish. Beyond Stockton applicant expects to divert from the highway at Woodbridge serving Sacramento River points, or by going straight through, via Galt, to Sacramento as the requirements of his deliveries demand. His proposed

time schedule shows a departure from Monterey at 6:00 p.m., deliveries between Gustine and Modesto up to 12 midnight, and arriving at Sacramento, final point of delivery, at 5:45 a.m. His offer of service is to make all deliveries before 6:00 a.m. In the reverse direction the only service is that of returning empty containers. Applicant leaves Sacramento at 6:15 a.m. and reaches Monterey at 4:30 p.m. Applicant testified that he has been hauling thirty to thirty-five iced boxes of fish a day, equivalent to one and one-half to two tons daily; that his gross receipts have been approximately \$52.00 per day and his expenses approximately \$35.00 per day.

Applicant further testified that he uses two trucks of 2½ ton capacity van type ventilated and that he operates every day in the year. The round-trip distance in the operation is approximately 486 miles daily. Applicant estimated his cost at 6.67 cents per mile based on his experience. He uses two drivers, one between Monterey and Modesto and the other between Modesto and Sacramento.

Applicant produced only one witness at Sacramento and this witness's testimony was that he used Railway Express Agency, which he deemed satisfactory. Protestant introduced a statement signed by eight fish dealers of Sacramento, all Japanese and members of the Japanese Fish Market Association, stating that the service of protestant Railway Express Agency "is entirely satisfactory and meets the requirements of our demands". This statement was procured by one of the employees of protestant Railway Express Agency. Findell testified that he had been serving eleven fish dealers, many of whose signatures were on the statement, and that as late as the day of the hearing they

told him they desired continuation of his service.

Railway Express Agency makes special provision for the transportation of fish from Monterey to the points covered in this application. All the service is conducted via San Francisco to the San Joaquin and Sacramento Valleys. Three services are available to San Francisco, as follows:

<u>Leave Monterey</u>	<u>Arrive San Francisco</u>
9:05 A.M.	12:15 P.M.
1:20 P.M.	5:35 P.M.
6:50 P.M.	10:50 P.M.

Exhibit No. 1 of protestant, however, does not show delivery at Sacramento River points as early as applicant, shipments arriving from 8:20 A.M. to 9:50 A.M., while applicant makes deliveries two to three hours earlier at all points. This is an important factor according to the testimony of witnesses. In the San Joaquin Valley Railway Express Agency deliveries are made to points between Stockton and Sacramento from 4:57 A.M. to 6:50 A.M. Deliveries in the district between Gustine and Modesto are made before 5:00 A.M. Some of the shipments for intermediate points are carried to Merced and then returned for delivery. The service is conducted over Southern Pacific passenger trains. No showing was made by protestant River Auto Stages to sustain its protest.

Careful consideration of the entire record justifies granting a certificate for the limited service which applicant proposes. The patrons of this service have in the main been using it for approximately two years and all expressed satisfaction with it. It is important to them and to their patrons that the fish be transported as rapidly as possible, and that delivery be made in the early morning hours, thus permitting distribution at other points than those served by applicant. Applicant accomplishes all this by direct route through the San Joaquin and Sacramento Valleys, making store door delivery

inside the locked premises of the consignee. The cargoes are moved under ice at night, and it was the testimony of applicant that re-icing has not been necessary at any time. The service of Railway Express Agency is maintained at a high standard, but does not in our opinion meet all the requirements of that portion of the public which wants earlier deliveries than this carrier is able to make, and at less rates. To deny continuation of a service that manifestly has been of advantage to commerce and to public health is not justified by the nature of the protest. Shippers' and receivers' choice of service appear reasonable. The application should be granted for the transportation of fresh fish, iced in boxes, and the return of empty containers, only, as there is no proof of other demand or use and applicant admits there has been no movement of dried or salted fish.

Walter B. Tindell 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

Walter B. Tindell having made application to the Railroad Commission for a certificate of public convenience and necessity to operate an automotive service for the transportation of fresh fish, iced in boxes, dried fish and salted fish in containers, and return movement of empty containers, between Monterey and Sacramento,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY
DECLARES that public convenience and necessity require the
establishment of automotive service for the transportation

of fresh fish, iced in boxes, and return movement of empty containers, between Monterey and Sacramento, and no other service, over and along the following route:

From Monterey via Salinas, San Juan Bautista, Hollister, Gustine, Crows Landing, Modesto, with departure from main highway south of Modesto to serve Turlock, Keyes and Ceres, Salida, Ripon, Manteca, Stockton, Lodi and Sacramento, with departure from highway at Woodbridge to serve Rio Vista, Isleton, Ryde, Walnut Grove and Courtland and Sacramento as shown by Exhibits "B" and "C" attached to the application; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted, 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 application in so far 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 in all other respects the application is hereby denied.

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 8th day of February, 1932.

C. J. Scammy

Leon O. Sullivan

M. J. Lee

W. B. Harris

Fred G. Stewart

Commissioners.