

Decision No. 25352.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
R. T. HOWARD, doing business under the
fictitious firm name and style of
OCEANSIDE TRUCK & TRANSFER COMPANY,
for a certificate of public convenience
and necessity authorizing it to operate
motor vehicles for the transportation
of freight traffic exclusively for The
Atchison, Topeka and Santa Fe Railway
Company, a corporation, over the public
highways between Oceanside, California,
Vista, California, San Marcos and Escor-
dido, California, and between Oceanside,
California, and Fallbrook, California.

ORIGINAL

Application No. 17880.

Robert Brennan and William F. Brooks for The
Atchison, Topeka and Santa Fe Railway
Company, interested party.

Rorick and Cottingham by L. W. Cottingham,
for applicant.

Henry J. Bischoff for Coast Truck Lines,
protestant.

BY THE COMMISSION:

O P I N I O N

Applicant herein seeks a certificate of public convenience
and necessity for the transportation of property between Oceanside,
Vista, San Marcos and Escondido and between Oceanside and Fallbrook.
The property to be transported is limited to shipments received by
applicant from The Atchison, Topeka and Santa Fe Railway Company,
hereinafter referred to as the Santa Fe.

Public hearings herein were conducted by Examiner Kennedy at Oceanside.

Applicant proposes to perform service only for the Santa Fe and to transport its l.c.l. shipments which are now moving via rail. The rates proposed are those now in effect in the tariffs of the Santa Fe.

The relationship between the railroad and the applicant is to be covered by contract calling for a rate of \$2.50 per ton for all freight transported by applicant. By the use of this method the Santa Fe expects to give better service to the rail shippers, the volume of whose shipments in its judgment does not justify the continued operation of train service. Applicant is willing to establish this relationship at the rate agreed upon and to transport no other property under the certificate sought except that received from the Santa Fe.

The application was opposed by the Coast Truck Line, which operates trucks between the termini and over the routes which applicant seeks to serve. Its protest is based upon the fact that it is a certificated carrier ready, able and willing to perform the service for which Howard seeks a certificate and that its service is adequate for all purposes and should be used by the railroad. In addition, the operation proposed by applicant was disputed as being a financial impossibility because of the rate per ton to be charged and the volume of tonnage moving. It is contended that based on the average tonnage for November, December and January (ending 1932) the gross tonnage available would approximate \$72.00 per month while the cost of operation would be \$75.00 a month or more, not including some items of overhead. Applicant contends however that although the volume was probably not sufficient to make profitable the service

for the three months shown, he was willing to enter into the arrangement with the expectation that the improved service would materially increase the volume of tonnage. In this connection it must be borne in mind that the Santa Fe is the real party in interest and if under the terms of the contract applicant cannot profitably conduct the service, the Santa Fe, as the testimony of its Assistant Industrial Agent shows, will be willing to make other arrangements with applicant.

Applicant is undertaking a contract for the transportation of freight which is now moving via rail and is offering to submit this operation to regulation of law. The Commission has granted a number of similar certificates to Railway Express Agency Inc. of California, a subsidiary of Railway Express Agency Inc. of Delaware, for the sole purpose of transporting property of the latter company when such transportation ceased to be conducted by rail. In addition, a similar certificate has been granted to protestant herein for the transportation of property of the Los Angeles Steamship Company between Los Angeles Harbor at San Pedro and San Diego, due to the suspension of the steamship service. (In Re Application of Coast Truck Line, Decision No. 24277 on Application No. 17726, dated December 7, 1931.)

We can see no particular difference in the principle here involved than in the other proceeding referred to in the preceding paragraph. The operative rights of protestant will not be infringed upon as the property to be moved does not now move over its lines. The certificate should be granted.

R. T. Howard, operating under the fictitious name of Oceanside Truck and Transfer Company, 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

R. T. Howard, operating under the fictitious name of Oceanside Truck and Transfer Company, having made application for a certificate of public convenience and necessity authorizing the operation of motor vehicles for the transportation of freight traffic exclusively for The Atchison, Topeka and Santa Fe Railway Company over the public highways between Oceanside, Vista, San Marcos and Escondido and between Oceanside and Fallbrook, a public hearing having been held, the matter having been duly submitted, and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment of the service proposed, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted to R. T. Howard, operating under the fictitious name Oceanside Truck and Transfer Company, subject to the following conditions:

1. The certificate herein granted is limited to the transportation of shipments in transit over the lines of The Atchison, Topeka and Santa Fe Railway Company and destined for points between Oceanside and termini above named, and applicant is not authorized to transport any other freight than such property.
2. Applicant shall immediately file with the Commission copy of any contract entered into between himself and said railway company, said contract to be filed on or before the filing of the acceptance of the certificate herein granted.

3. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
4. Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days from the date hereof, on not less than ten days' notice to the Commission and the public 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.
5. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from the date hereof, on not less than five days' notice to the Commission and the public, time schedules covering the service herein authorized, in a form satisfactory to the Railroad Commission.
6. 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.
7. 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 14th day of November, 1932.

C. P. Levey
Lion Whidley
W. J. Linn
M. B. Harris
Fred G. Clever
 Commissioners.