

Decision No. 25545.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
CONSOLIDATED SHIPPERS, INC., for
certificate of public convenience
and necessity to operate an auto
truck service for the transportation
of freight as a common carrier
between Los Angeles Harbor, Los
Angeles, Colton and San Bernardino, on
the one hand, and Victorville,
Barstow, Yermo and California Nevada
State Line on the other hand, serving
points intermediate between San
Bernardino and the State Line near
Wheaton Springs.

)
Application
No. 18364

In the Matter of the Application of
HALE BROS. TRANSPORTATION COMPANY,
for an order authorizing permission of
public convenience and necessity to
operate a refrigerated service on
perishable freight only as a common
carrier between Los Angeles, California,
Yermo and intermediate points to the
California State Line.

)
Application
No. 18422

In the Matter of the Application of
A.L. MOCKENHAUPT and LOUIS L.
MOCKENHAUPT, co-partners for a cer-
tificate of public convenience and
necessity to operate an automobile
freight line for the transportation
of freight between Los Angeles -
Colton - San Bernardino, on the one
hand, and points between San Bernardino
and Oro Grande and Yermo on the other
hand, serving intermediate points.

)
Application
No. 18460

Hugh Gordon for Consolidated Shippers Inc.,
Applicant.

Charles E. Schaeffer for Hale Bros.
Transportation Company, Applicant.

Richard T. Eddy, for A.L. and L.L. Mockenhaupt,
Applicants.

Malcolm Davis for Los Angeles and Salt Lake
Railroad, Interested Party.

Robert Brennan and William F. Brooks for
Atchison, Topeka & Santa Fe Railway, Protestant.

Edward Stern for Railway Express Agency, Inc.,
Protestant.

BY THE COMMISSION:

O P I N I O N

Applicants herein seek certificates of public convenience and necessity authorizing the establishment and maintenance of a service for the transportation of property by auto truck between Los Angeles, Colton and San Bernardino on the one hand and points north of San Bernardino to the California State Line near Wheaton Springs. The applications were not consolidated and each is being dealt with separately in this opinion and order as a matter of convenience. Application No. 18364 was originally filed by F. M. Hodge but during the course of the proceedings Consolidated Shippers, Inc., in which Hodge is the principal owner, was substituted as applicant. A copy of the articles of incorporation was filed herein.

Public hearings were conducted by Examiner Kennedy at Los Angeles, the matters having been duly submitted after briefs were filed.

Authority to serve all the points covered by the applications was originally granted to Stevenson and Shafer, as copartners, and included all points north of San Bernardino. By authority of Decision No. 24819, dated May 31, 1932, on Application No. 18140, the interests of the copartnership were divided, Shafer retaining that portion of the operation between Los Angeles and Yermo and Stevenson taking the operation from points between Yermo and the State Line in connection with his service to Las Vegas. Subsequently Shafer joined in an application to transfer his rights to the Mockenhaupts, operating under the name of B. & L. Truck Company.

After hearing, the Commission, by Decision No. 25230, dated October 3, 1932, on Application No. 18403, authorized the transfer of Shafer's rights to the Mockenhaupt's for a consideration of \$2500.00 but with the condition in the order that of this sum \$1187.00 should be impounded for distribution among the C. O. D. creditors of the Shafer service. The condition was acceptable to both purchaser and seller but it developed that the State of California possessed a tax lien upon the operations of Shafer amounting to approximately \$9000.00 which the state asserted would be pursued in case of any transfer of the operating right of Shafer. Under these circumstances the Mockenhaupt's declined to complete the transaction and filed the instant application for a certificate. They ask for no greater right than Shafer sought to transfer to them and propose to adopt the rates and time schedules of Shafer.

The portion of the Stevenson and Shafer operations that was taken over by Stevenson - the points between Yermo and the State Line - also became financially involved and eventually Stevenson was thrown in bankruptcy in the Federal Court and the operations was discontinued. At this time F. M. Hodge who had established interstate operation to Las Vegas over the route pursued by both operations of Shafer and Stevenson, filed an application in his own name for the same rights possessed by Shafer and Stevenson. Subsequently Hale Bros., who also conduct a similar interstate service filed their application limiting the service to points north and east of Yermo. At the final hearing this application was amended to include points between San Bernardino and Yermo. At the hearings witnesses were produced by applicants to show the necessity for the service to be established but it was urged that the long period of operation conducted by Shafer and Stevenson was in itself evidence

of the need of such service. The tonnage available between Los Angeles and points beyond San Bernardino to and including Yermo is approximately five tons daily, practically all of which is l. c. l. freight. The tonnage moving between Yermo and the State Line is approximately 1800 pounds daily. Service to this area could not be conducted except incidentally to a through service to Las Vegas. Additional evidence of the tonnage moving by truck is found in the 1931 Annual Report of Stevenson and Shafer which shows that during the year they moved 11,804 tons from which they received a revenue of \$196,231.

In behalf of the railroads and the Railway Express Agency protesting the applications, a number of witnesses were called to show the adequacy of the service by rail to all points between San Bernardino and Yermo. The Atchison, Topeka & Santa Fe Railway accepts shipments at its freight depot at Los Angeles until 5 PM and has a special car for Victorville and Oro Grande breaking bulk at Victorville and Oro Grande at approximately 7 AM daily. There is also a car that breaks bulk at Barstow for local delivery and also to points east on the Santa Fe as far as Daggett. The Santa Fe performs a pickup service at Los Angeles and has delivery trucks at Barstow, Victorville, Cajon, Summit, Oro Grande, Helendale and Hodge. The tonnage has increased considerably since pickup service had been established. The rates were on a parity with the established truck rates. The Railway Express Agency, Inc. maintains a pickup and delivery service at Los Angeles over an area of 80 square miles. Shipments may be received as late as 9 PM. Six schedules daily are maintained between Los Angeles and all points between San Bernardino and Yermo with delivery the following day.

The record in our opinion justifies the continuance of of the truck service formerly conducted by Stevenson and Shafer.

The three applicants here before us appear at somewhat equal advantage. The Mockenhaupts, who would have been the beneficiaries of the transfer of Shafer's right, with the approval of the Commission, promptly made application to continue the service which collapsed when Shafer discontinued service. They offer to continue the Shafer rates (C.R.C. No.8), rules and time schedules and under the same conditions and to all the points served by Shafer. But for the impediment of the tax lien they would long ago have been vested with authority to conduct these operations. It appears to us that equity is with them in their request for a certificate to continue these operations. Hale Bros. are comparatively new operators and have never operated under a certificate of public convenience and necessity from this Commission. However, they have shown that they could render the proposed service in a satisfactory manner. The Consolidated Shippers, Inc. has shown itself not only capable of performing the service but experienced as well. The corporation is the operating entity of F. M. Hodge who successfully performed under authority of this Commission a truck service between Los Angeles and the San Joaquin Valley to Fresno and Los Angeles to Imperial Valley points and which was later sold to Motor Freight Terminal Company. The question of rates does not materially affect the situation as the rates proposed by such applicant are no different from the rates to which the public has long been accustomed. In our judgment the certificate covering the points east of Yermo should be granted the Consolidated Shippers, Inc.¹

¹ The application of Consolidated Shippers, Inc. was filed August 22, 1932. The application of Hale Bros. was filed September 19, 1932.

A. L. Mockenhaupt and Louis L. Mockenhaupt, co-partners, and Consolidated Shippers, Inc. are 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.

ORDER

A. L. Mockenhaupt and Louis L. Mockenhaupt, co-partners, having made application as above entitled, public hearings 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 and operation of an automotive freight line for the transportation of property only between Los Angeles, Colton and San Bernardino on the one hand and all intermediate points between San Bernardino and Yermo (including Yermo and excluding San Bernardino) on the otherhand, via Victorville and Barstow, over and along the following route:

Via Valley Boulevard from Los Angeles to Colton and San Bernardino thence via state highway via Victorville and Barstow to Yermo, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted A. L. and Louis L. Mockenhaupt, subject to the following conditions:

1. Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicants 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 insofar as they conform to the certificate herein granted.
3. Applicants shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from 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.
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 applicants herein unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

Consolidated Shippers, Inc. having made application as above entitled, public hearings 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 and operation of an automotive freight line for the transportation of property only between Los Angeles, Colton and San Bernardino, on one hand and all points between Yermo (but not including Yermo) and the California Nevada State Line near Wheaton Springs, over and along the following route:

Via Valley Boulevard from Los Angeles to Colton and San Bernardino and State Highway via Victorville, Barstow and Yermo to State Line, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted Consolidated Shippers Inc., a corporation, 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 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 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 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.
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.

Lloyd R. Hale and W.G. Hanson, a copartnership, doing business as Hale Bros. Transportation Co. having made application to establish and operate automotive service for the transportation of property between Los Angeles and points between Yermo and the California-Nevada State Line near Wheaton Springs, public hearings having been held and the matter being now ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY
DECLARES that public convenience and necessity do not require the
service as proposed, and

IT IS HEREBY ORDERED that the application be and the
same hereby is 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 ¹⁵16 day of
January, 1933.

C. L. Loney

W. J. Carr

W. H. ...
COMMISSIONERS.