

Decision No. 25809.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of HENRY B. ELBERT for certificate of public convenience and necessity to operate an automobile stage line, as a common carrier, between Arvin and Mojave and intermediate points; for an alternate route between Lamont and Arvin via Di Giorgio Farms and to consolidate his operation into one complete system under a certificate of public convenience and necessity in lieu of existing certificate.

Application No. 18161.

ORIGINAL

Rowen Irwin and Earl A. Bagby for Applicant.

H.W. Hobbs for the Southern Pacific Company and Pacific Motor Transport Co., Protestants.

Robert Brennan and Wm. F. Brooks for the Atchison, Topeka & Santa Fe Railway Company, Protestant.

Edward Stern and A.S. Weston for Railway Express Agency, Inc., Protestant.

BY THE COMMISSION:

OPINION

Henry B. Elbert, above named applicant, has petitioned the Railroad Commission, in accordance with his amended application, for an order declaring that public convenience and necessity require the operation by him of an automobile stage service as a common carrier for the transportation of passengers, baggage and express between Bakersfield and Mojave serving Edison, Highway Junction, Clear Creek, Keene, Tehachapi, Monolith and all intermediate points by way of Arvin and to operate an alternate route from Lamont to Arvin via Di Giorgio Farm. This proposed service is sought as an extension of applicant's present authorized service between Bakersfield and Arvin by virtue of Decision No. 23742, dated June 1, 1931,

on Application No. 17368. Applicant proposes to carry no express package weighing in excess of 100 pounds excepting, however, fresh meats and laundry.

Public hearings on this application were conducted by Examiner Satterwhite at Bakersfield, the matter was duly submitted and is now ready for decision.

Applicant proposes to charge rates and to operate under a time schedule in accordance with amended Exhibits A-1 and B-1 attached to said application. The equipment proposed to be used will consist of two 7-passenger sedans and a combination passenger and express motor vehicle.

Southern Pacific Company, Pacific Motor Transport Company, The Atchison, Topeka & Santa Fe Railway Company and the Railway Express Agency, Inc. protested the granting of this application.

Applicant testified in his own behalf and called several witnesses in support of his proposed service.

The evidence shows that Arvin has a population of about 400 people and is surrounded by a large agricultural district consisting of fruit orchards and vineyards. The extensive Di Giorgio Farm and other adjacent farms employ considerable seasonal labor in the orchards, vineyards and local packing house and many people, both men and women, come from the mountain district to work on these ranches and in the packing house. The proposed extended service passes through a mountain region and the merchants and residents along the route do a large part of their buying at Bakersfield, also some at Mojave.

Representatives of business firms at Bakersfield appeared at the hearing and testified to the demand of the merchants and others along the proposed extension for a pick-up and store door delivery. Supplies of various kinds, consisting of fruits and vegetables, groceries, dairy products, bakery goods, soft drinks,

tobaccos and candies and ice cream are sold along the route. Since the discontinuance of the Pacific Greyhound Lines' service in March 1932, deliveries of the above commodities have been made in this territory and along this proposed extended route of applicant by a truck peddler and an unregulated carrier and the dealers and merchants along the route have indicated a desire or preference for an authorized service as proposed. It was shown that there is a need for quick deliveries of merchandise, auto parts and accessories.

E.R. Seat, Secretary of the Bear Mountain Boosters Club at Arvin, whose membership consists of farmers and business men, testified that this organization desires the establishment of the proposed stage service for the reason that there exists a common or community interest between the Tehachapi district and the Arvin district and that the service would provide a direct interchange of different farm products between these districts, as well as afford a direct and convenient transportation for friends and relatives to the Keene Hospital and for other passengers to local points. It was also shown that the Monolith Cement Company at Monolith employs about 200 laborers who would be more conveniently served by the extended stage service.

The Benham Ice Cream Company and one or two other ice cream concerns ship large quantities of ice cream into this territory including Bishop and various points in the Owens Valley. The manager of one of these ice cream companies testified that they were in need of a more expeditious service for their perishable products to Owens Valley points than that furnished by the present rail service in order to insure a more merchantable condition of ice cream. In this connection the record shows that the stage service by connecting up with another stage line at Mojave will enable deliveries to be made from four to six hours earlier than the rail service.

The protesting rail carriers offered in evidence joint exhibits showing their passenger train service, fares and revenues between Bakersfield and Mojave and way points. The Santa Fe Railway Company, by virtue of a lease arrangement, operates over the rail lines of the Southern Pacific Company between these points subject to the operating control of the Southern Pacific Company.

R.G. Grady, Rate Expert for the Southern Pacific Company, testified to the effect that the one stage schedule proposed by applicant between Bakersfield and Mojave and way points would divert and detract passenger travel from the Southern Pacific trains No. 52 southbound and No. 51 northbound. Mr. Grady testified in part:

- Q. The proposal of the applicant is one schedule a day leaving Bakersfield in the morning southbound.
- A. I understand that.
- Q. To what extent do you think it would affect revenue that you have shown, to have a stage operating as proposed by the applicant?
- A. There is not any question but that this traffic (Exhibit No. 4) moving between Bakersfield and Tehachapi and Monolith and Mojave is using train No. 52 in one direction, train No. 51 in the opposite; any additional service put on is going to detract from those two particular trains.

While the record shows that there will be some diversion of traffic from the Southern Pacific Company, the record also shows that applicant is here proposing a service which cannot in all respects be adequately maintained by the rail lines. The application will be granted.

Henry B. Elbert 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 proceeding, the matter having been submitted and being now ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by Henry B. Elbert of an automobile stage service as a common carrier for the transportation of passengers, baggage and express between Bakersfield and Mojave serving Edison, Highway Junction, Clear Creek, Keene, Tehachapi, Monolith and all intermediate points by way of Arvin, and to operate an alternate route from Lamont to Arvin via Di Giorgio Farm.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to Henry B. Elbert for the operation of the service hereinabove described, not as a separate service, but as an extension and in addition to applicant's present passenger and express operative rights between Bakersfield and Arvin, as granted by Decision No. 23742, dated June 1, 1931, on Application No. 17368, 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 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 (5) 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 him 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 10th day of

April 1933.

C. C. Deaver
Leon Whidell
W. J. ...
W. B. ...
W. H. ...
Commissioners.