

Decision No. 10356.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application)
of W.P. BILLINGSLEY, for Certif-)
icate of Public Convenience and)
Necessity to Operate Freight and)
Express Service between Placentia)
and Los Angeles passing in route)
through Richfield, Yorba Linda,)
Brea, La Habra, Montebello, and)
Belvedere Gardens.)

Application No. 7664.

Marks & Leuner, by Albert Leuner, for Applicant.
Paul Burks, for Atchison, Topeka & Santa Fe Railway
M. Thompson, for American Railway Express
E.N. Blair, for Russell Peck and Hodge Transportation
Company
S.B. Cowan, for Triangle-Orange County Express and
Richards Truck and Warehouse Company
G.F. Squires, for Pacific Electric Railway
K.F. Beyerle, for Marietta Valley Motor Freight Line.

BY THE COMMISSION:

O P I N I O N

W.P. Billingsley has applied to the Railroad Commission for a certificate of public convenience and necessity to operate auto truck freight and express service between Placentia and Los Angeles and serving between termini, Richfield, Yorba Linda, Brea, La Habra, Montebello, and Belvedere Gardens.

A public hearing herein was held by Examiner Williams at Los Angeles.

Applicant proposes service additional to that of seven other auto carriers, some of whom, serve most of the route

and others smaller portions. In addition, there are five rail carriers serving portions. Nearly all of them were protestants.

Applicant testified that he had built up a local transfer business in the town of Brea, using a small truck of one and one-half tons capacity, until he had almost daily demand to visit Los Angeles and other points along the Whittier-Santa Ana road. His business ranged between \$400.00 and \$450.00 a month, with operating cost of \$399.50 a month, including \$200.00 salary to himself. Applicant has been charging a rate based on the service of his truck, at the rate of \$2.00 an hour. Since being notified that his operation was in violation of law, he had confined his operation to local transfer work. His testimony shows that practically all of his service had been at La Habra and Brea, and that this service included indiscriminate pick-up at Los Angeles with return door delivery.

Applicant produced witnesses in support of need of additional service from La Habra and Brea. He had not canvassed Belvedere Gardens and Montebello and had only twice given service in either. At other points applied for he testified he had interviewed business men who encouraged his enterprise.

Applicant testified that he had been hauling about 20 tons a month during the five months he operated. The testimony of his own witnesses was that their share of this tonnage was diverted from other carriers because of their alleged unsatisfactory service. The testimony showed that the charges of applicant had been about the rates of the Pacific Electric Railway.

Applicant proposes rates which are graduated as to distance only and are uniform on all classes and commodities. The distance from Los Angeles to Placentia is approximately 29 miles. The rates in four zones are 20 to 35 cents per hundred weight or for contents in capacity not to exceed four cubic feet. Indefinite charges for special equipment are provided. Special hauls are at "minimum load charge", though the rates proposed do not fix the minimum load. There is a separate schedule for trunks and grips. The minimum charge on any delivery is 50 cents. These rates, applicant testified, are based on his previous operation, computing the value of the employment of his truck and himself at \$2.00 an hour. What he based superiority of his service on, as a need, was a "personal service" which other carriers have not been giving. This "personal service" was a willingness, at any time, to make trips and collect articles for return to Brea and La Habra customers. In other words, he combined chores of various kinds with transportation. Not being bound by schedules, or the restrictions of authorized carriers, such departures were possible. That they could continue under scheduled operation without change is doubtful.

Witnesses from Brea were emphatic in supporting a service by which Brea, an important central point in the Brea oil field, would become a terminal and distributing point. This desire was testified to by J.C. Sexton, a banker, President of the Board of Trustees of Brea, who said the service rendered by Billingsley had been of great value in establishing close business relations with Montebello, Santa Fe Springs, Richfield and Yorba Linda. He estimated that there

are 7500 inhabitants in the entire oil district. M.C. Fiscus, Secretary of the Brea Chamber of Commerce, testified that that organization, with a large membership present had approved the proposed service of applicant. Two other witnesses testified that other automobile carriers were careless in handling shipments and not diligent in deliveries. Each related an instance of inferior service. N.M. Launer, Secretary of the La Habra Water Company, testified that applicant's service was superior to any other he had used. A.H. Johnson, hardware merchant at La Habra, testified all methods of transportation available to him are good, but that he liked applicant best because of his "personal service".

The services which applicant had made available to those who appeared in support of the application were begun and continued without any attempt at compliance with the auto-transportation law and his operations were at will, unrestricted by schedules or non-discriminatory rates. The "personal service" given by him was his and his witnesses' strongest urge that his service be restored under the sanction of a certificate. As this proof related to only two points directly, the remainder of the operation proposed may be dismissed from consideration, being without substantial affirmative support in the record.

This reduces applicant's possible operation to Los Angeles, La Habra and Brea and induces consideration of protestants' testimony as to those points. The Triangle-Orange County and Santa Ana Express operates through both places morning and noon, two trucks each way, according to the testimony of its owner, S.B. Cowan, and is ready and able to provide any additional service or equipment required. The Richards

Truck and Warehouse Company operates one truck each way daily. The Highway Transportation Company and Motor Transit Company also give daily service from Los Angeles to La Habra and Brea. In addition the Merchants Express operates daily service to La Habra.

Protestant, Pacific Electric Railway has a freight train operating into La Habra at 10:00 A.M. and returning at 4:00 P.M. Over the lines of the Pacific Electric Railway, protestant American Railway Express has daily service during business hours between Los Angeles and La Habra and Brea.

As La Habra has a population of approximately 1500 persons and Brea about 2500, this seems abundant freight and express transportation facilities to and from Los Angeles. If the service has not been efficient, complaint to this Commission should be made and the carriers will be brought to their proper and necessary duties.

The instant case is typical of many. Applicant procured a truck at a cost of \$1,042.00 and began operating "by contract" whenever he pleased. By this "personal service" he undoubtedly attracted business from his legalized competitors and gradually built up a profitable operation. Not until this Commission ordered his unlawful operation to desist did applicant give heed to the legal obligations. This Commission cannot ratify expedients of this kind to establish service which the law distinctly says may not be begun until the necessity and convenience thereof have been established and a certificate granted. The Railroad Commission cannot, in effect, put a premium on illegal operation and injure, if not break down, the established operations of those who have complied with the law.

It is apparent that applicant has not sustained his burden of proof as to the necessity of his service, at any point and has only proved it measurably convenient at La Habra and Brea and that, so failing, the application should be denied.

O R D E R.

W.P. Billingsley having applied to the Railroad Commission for a certificate of public convenience and necessity to operate auto truck freight and express service between Placentia and Los Angeles and points intermediate, 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 FINDS AS A FACT that public convenience and necessity do not require the service proposed by applicant herein, and, basing its order on said finding

IT IS HEREBY ORDERED That the application herein be and the same hereby is denied.

Dated at San Francisco, California, this 25^d day of April, 1922.

Dariusz Mastan
Clara A. Rogers
J. F. [unclear]
Commissioners.