

Decision No. 11335

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Antelope Valley Milk Producers
Association, a voluntary and
unincorporated association,
Complainant,

vs.

Walter Kielhofer,
Defendant.

Case No. 1801

In the Matter of the Application
of JOHN H. UNDERWOOD for a certi-
ficate of Public Convenience and
Necessity to operate Auto Freight
Truck Service (Milk Route) be-
tween Lancaster and Los Angeles.

Application No. 8211

In the Matter of the Application
of D.K. HUTCHINSON for certificate
of Public Convenience and Necessity
to operate Freight service between
Lancaster and Vicinity and Los
Angeles, California.

Application No. 8246

T.H. Brice, for Complainant
W.C. Snyder, for Defendant
W.I. Morrison, shipper, in propria persona
Chas. E. Sterns, for D.K. Hutchinson, Applicant
John H. Underwood, Applicant, in propria persona
T.A. Woods, for American Railway Express, Protestant
L.N. Bradshaw, for Southern Pacific Company, Protestant
F.F. Sullivan, for Red Line Express, Protestant.

BY THE COMMISSION:

OPINION

Antelope Valley Milk Producers Association complains
of Walter Kielhofer, defendant, and alleges that he ceased to

follow his schedule on file with this Commission for the pick-up and transportation of milk from certain producers, and that because of such failure to observe schedules caused milk to deteriorate and that generally defendant's service has been inefficient, and inadequate. Complainant prays that, because of the facts alleged, defendant's certificate to operate be revoked. Defendant, in his answer denies specifically the allegations of complainant, and affirmatively alleges that a change of methods and rates, put in force by him July 24, 1922, was authorized by the Railroad Commission.

Defendant moved to dismiss the complaint, on the ground that the Antelope Valley Milk Producers' Association, a voluntary organization, unincorporated, had not authorized its secretary, Mrs. Birdie F. Pemberton, to institute the complaint. The motion was denied, on the ground that, though the irregularity may have been established, no prejudice attached to the fullest inquiry by the Commission into the complaints made in the interest of the shipping public.

Applicants Hutchinson and Underwood seek to succeed defendant Kielhofer, in event that, if the complaint is sustained and the certificate of defendant revoked, either may, under a showing of public necessity, establish a new service.

A public hearing was held at Lancaster by Examiner Williams, the matters by stipulation being consolidated for hearing.

It appears from the testimony that defendant found road conditions during the winter of 1922 frequently very bad, and that mud and snow, at different times, made it impossible for him to observe his schedules. Upon such a showing, with the assent of the complainant herein, the Commission, under date

of May 12, 1922, granted defendant authority to desist pick-up at ranches and established a reduced rate from Lancaster to Los Angeles. This affected all shippers and intended that each should deliver his milk to the defendant carrier at his depot in Lancaster. The testimony shows, however, that this was not the result of the filing of the new tariff, but that the carrier continued to pick up milk for some shippers on the "east side" at the rate of 10 cents per can additional to the new rate from Lancaster; and, as to shippers on the west side, continued pick-up at the old rate.

It was not until July 24, 1922, that the carrier desisted from pick-up at the "west side" ranches and then, not because of bad road conditions, but because of heat and distance, the west side shippers being about ten miles from Lancaster. Thereafter these shippers were required to transport their milk to Lancaster by their own means.

In effect, the carrier did maintain a public service between Lancaster and Los Angeles, and an optional, private pick-up, at his own rates, in the shipping area about Lancaster. The result was confusing, iniquitable among shippers, and altogether dissatisfactory to shippers and creameries at Los Angeles, according to the testimony.

It was shown by witnesses that defendant's service was often delayed and several times utterly failed in transporting milk to Los Angeles, and that there was similar delay in returning dairy feed and supplies. Defendant's excuse for these inefficiencies was impossible operating conditions, due to impassible roads. In a large measure, defendant's excuses were real. No service of this character, from a region approximately 80 miles from the destination of the product, can be maintained

at all times, in spite of the elements, with regularity.

On the whole, however, there is not sufficient evidence on which to justify revocation of defendant's certificate, and we must so find as a fact. Defendant understands his field of operation by long experience, has adequate equipment, and made the promise at the hearing that he would restore his former service and rates if the Commission so directed. This proffer of defendant is to the advantage of all parties and should become the basis of a new and better service than has been given. Defendant testified that he regards the rates too low to give the pick-up service desired by shippers and that the uniform rate for all, regardless of distance and road conditions, caused dissatisfaction on the part of "east side" shippers, who believed their rates should be lower than the remote west side shippers. If defendant regards his rates as noncompensatory or discriminative, he should make application for a revision of them. The region is developing as a dairy field and the present producers testified they would enlarge their herds and production if stable service to their only available market, Los Angeles, were provided. All that may now be done is to order the old rates and pick-up service restored, and the order following will so require.

As there was no testimony that public necessity requires the service of more than one carrier, and as the facts show that there is only traffic enough for one, the applications of Underwood and Hutchinson may be denied without prejudice.

O R D E R

Antelope Valley Milk Producers' Association having made complaint to the Railroad Commission, praying for revocation

for cause of the certificate of public convenience and necessity heretofore granted to Walter Kielhofer, defendant herein, a public hearing having been held whereat all parties were heard, and the matter having been duly submitted, and now basing its order on the findings of facts in the foregoing opinion,

IT IS HEREBY ORDERED BY THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA that complaint herein be and the same hereby is dismissed.

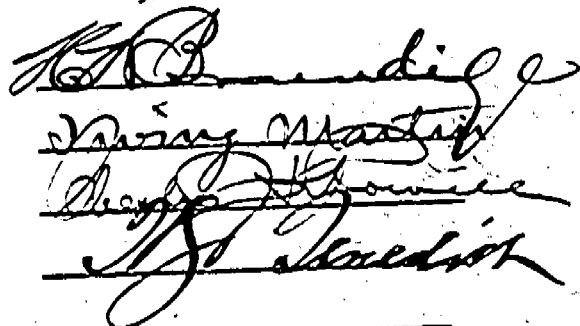
AND IT IS FURTHER ORDERED that defendant Walter Kielhofer file within ten days from date hereof, a tariff cancelling rates established by his C.R.C. No.3, superseding his C.R.C. No.2, and reinstating said rates contained in his C.R.C. No.2.

John H. Underwood and D.K. Hutchinson having each applied to the Railroad Commission for certificates of public convenience and necessity to operate auto freight service for the transportation of milk and dairy products between Lancaster and Los Angeles, a public hearing having been held, the matters 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 do not require the service proposed by applicants, or either of them, as applied for herein, and

IT IS ORDERED that the applications herein, and each of them be and same hereby are denied without prejudice.

Dated at San Francisco, California, this 8th
day of December, 1922.


Commissioners.