

Decision No. 7307

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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In the Matter of the Application)
of O. L. Swett for certificate)
of Public Convenience and Necessity) APPLICATION NO. 5190
to operate automobile truck freight)
service between Oakland, Stockton,)
Tracy and Fresno.)

E. M. Otis, for applicant.
Frank B. Austin, for Southern Pacific Co.

By the Commission:

O R D E R

O. L. Swett by this application seeks authority to operate an automobile freight service between Oakland and Fresno and between Oakland and Stockton, the route to be followed is through Hayward, Livermore, Tracy, Los Banos and Mendota.

The application sets forth that the railroad service is infrequent and unsatisfactory and also presents a schedule of the freight rates to be assessed. The applicant testified that he had made inquiries of some five shippers, two at Oakland and three along the line as to the necessity for the service. Three witnesses were called on behalf of the applicant but they presented no positive testimony to show that there was a necessity at this time for the proposed service.

The territory between Oakland and Stockton is covered by three rail lines, the Southern Pacific, Atchison, Topeka & Santa Fe and Western Pacific while practically every station on the east side of the San Joaquin Valley from Tracy to Fresno is served by the freight trains of the Southern Pacific Company. The proposed rates are materially higher than those via the rail

carriers and the higher rates are explained on the grounds that the service contemplates pick-ups and deliveries at the different points. The Southern Pacific Company appeared in opposition and through the testimony of its Superintendents located at Oakland and Stockton explained the details of freight train service now being rendered. This service provides that freight originating ^{at} Oakland reaches Fresno at 9 A.M. the following morning and that early deliveries are made at the intermediate points. In Application No. 3159, Decision No. 4674, 14 C.R.C. Page 118, the Commission said:

"This is not a question as to whether the public authorities shall extend a favor to existing operators by refusing to permit newcomers to enter the field or whether they shall extend a favor to the newcomer by permitting him to compete with existing companies. No person has a vested right to engage in public utility service. The law looks not to the operator but to the convenience and necessity of the public and clearly contemplates that applications of this character shall be decided on the basis of this test alone and not on the basis of the desires or necessities of the operators. Operators may be permitted to enter the field only at such times and in such places and under such conditions as will best subserve the convenience and necessity of the public."

The testimony in this proceeding is not sufficient to show that public convenience and necessity require the operation of the proposed service between Oakland and Stockton or between Oakland and Fresno. The application should be denied.

O. L. Swett having petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation of an automobile freight line between Oakland and Stockton and Oakland and Fresno, a public hearing having been held, the matter having been duly submitted and the Commission being fully advised,

THE RAILROAD COMMISSION HEREBY DECLARES that public convenience and necessity do not require the establishment of an automobile truck line as a common carrier of freight between Oakland and Stockton and Oakland and Fresno by the petitioner herein.

IT IS HEREBY ORDERED that this application be, and the same is hereby denied.

Dated at San Francisco, California, this 23rd day of March, 1920.

Edw. P. Edgerton
H. D. Loveland
Frank W. M.
H. H. Bounding
Dwight Martin
COMMISSIONERS.