

Decision No. 8840**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 NEWTON and AYERS (Co-partners) for
 certificate of public convenience and
 necessity to operate contract motor
 freight service between San Francisco,
 California, and Gilroy, California.)
)
) Application No. 6516.
)

B. F. McKibben for Applicant.
 L. N. Bradshaw for Southern Pacific Co.
 N. K. Lockwood for American Railway Express Co.
 C. F. Tramutoro for Lester Hubert Co.

BY THE COMMISSION.

O P I N I O N

By the above application, Sam Newton and M. W. Ayers, as partners under the name of Newton & Ayers, seek authority to operate a through motor freight service between San Francisco and Gilroy and vicinity, but not serving any intermediate points. They propose operation as contract carriers.

A public hearing upon the application was held by Examiner Westover at San Francisco.

It appears from the testimony that the commodities proposed to be handled by applicants are limited primarily to cheese and some eggs and dairy products northbound, and cheese factory and dairy supplies and general merchandise southbound,- this freight to be moved only under contracts with 35 shippers under a rate of 50 cents per 100 pounds northbound and 25 cents per 100 pounds southbound.

The service in question was originally established in March, 1918, by C. C. Newton without authority of the Commission, and subsequently continued without knowledge that such authority was necessary, but when Mr. Newton learned of the requirements of the statute he filed the necessary application. When the application was set for hearing, the notice of hearing addressed to him did not reach him because of his absence from the State, and the application was dismissed for want of prosecution, there being no appearance on his behalf at the hearing. Subsequently his trucks were acquired by present applicants and the present application filed. The line was projected primarily for the purpose of hauling cheese to the San Francisco commission house of W. D. Ayers & Company. Its service has been extended to other shippers so that at present it brings to San Francisco about 16 tons of cheese per week and one-half ton of eggs, the service given being two trips per week, leaving Gilroy at about midnight and arriving in San Francisco before 8:00 the following morning and in ample time for the opening of the Dairy Produce Exchange at 9:00 A. M. About one-fourth of the northbound shipments are destined to Messrs. W. D. Ayers & Company, and the remainder to other commission houses.

Applicant presented testimony tending to show a number of reasons why cheese can be handled far better by truck than by train. This traffic never has moved by express, principally because of the 86 cent rate, and does not now move by freight because of the more satisfactory service by truck, incident to the nature of the commodity and marketing conditions, although the rail rate on cheese in wood is 28 cents.

It appears from the testimony of cheese manufacturers and experts, presented at the hearing, that cheese transported by truck direct from the factory to the San Francisco wholesalers without extra handling, without delay in transit and under condi-

tions allowing the free circulation of air about it, arrives in better condition and grades higher and brings a higher price than cheese which sweats or moulds owing to poorer ventilation in closed cars, or to the effect of summer heat on the cheese and its paraffine outer coating. It also appears that where cheese is transported in wood containers which have become battered in transit or which bear shipping marks, pasters, or otherwise appear untidy, it cannot be handled on the Exchange under its rules, and that an allowance of one cent per pound for new containers has to be made as a custom of the trade where containers are not fresh and ready to be used for reshipping by the purchaser; and also that a poor condition of containers causes the cheese to be graded as of a lower quality. It also appears that certain makes or special brands of cheese from the Gilroy district now sold without containers must be boxed under the railroad rules, thus requiring additional cost, although they are successfully handled by truck without boxing. Shippers also complain of delays of two or three days incident to shipments by freight, and of the chance of loss through fluctuation in prices on the exchange.

The elapsed time in transit complained of is between the date of the bill of lading and the time when the goods can be offered on the exchange, although the Southern Pacific Company's exhibit of car movements from July 31st to August 30th, 1920, showing a movement of 24 cars, indicates that the elapsed time from 4:00 P.M. on the day of loading until freight is ready for removal from the freight house in San Francisco, usually ranged from 15½ hours to 17½ hours; but that on 5 of the days the time in transit was 39 hours. Usually the cheese arrived between 8:45 A.M. and 9:35 A.M., evidently too late to be placed on sale at the opening of the exchange on the day of arrival; but on the 5 days when the goods were 39 hours in transit, they were ready for delivery at 7:00 A.M.

The proposed truck rate includes free pick-up and delivery, this service extending to dairies and cheese factories several miles from Gilroy, much of the cheese originating at San Felipe, 11 miles away.

Apparently the truck line offers a special class of service in the handling of cheese, which, because of the character of the service, cannot be rendered by the rail carriers, and for which the shippers are apparently ready to pay a much higher rate than the ^{rail} freight rate; and in southbound merchandise movements it furnishes a free pick-up and delivery service which cannot be rendered by rail carriers.

ORDER

A public hearing having been held upon the above entitled application, the matter being submitted and ready for decision,

THE RAILROAD COMMISSION HEREBY DECLARES that public convenience and necessity require the operation by Sam Newton and M. W. Ayers, partners, under the name of Newton & Ayers, of an automotive through truck freight service between Gilroy and San Francisco, not serving any intermediate points between San Francisco and any points north of San Martin; such service to be performed only for the contracting parties in 35 contracts filed in evidence as applicants' Exhibit No. 1 herein; the northbound traffic hereunder to be limited to cheese, eggs, dairy and poultry products.

The operative rights and privileges hereby established may not be transferred, leased, sold nor assigned, nor the said service abandoned unless the written consent of the Railroad Commission thereto has first been procured.

No vehicle may be operated in said service unless said vehicle is owned by the applicant herein or is leased by said applicant under a contract or agreement satisfactory to the Railroad Commission.

IT IS HEREBY ORDERED that each of applicants shall within twenty (20) days from the date hereof file with the Railroad Commission his schedule and tariffs covering said proposed service, which shall be in addition to proposed schedule and tariff accompanying the application, and shall set forth the date upon which the operation of the line hereby authorized will commence, which date shall be within ninety (90) days from date hereof, unless time to begin operation is extended by formal supplemental order.

The authority herein contained shall not become effective until and unless the above mentioned schedules and tariffs are filed within the time herein limited.

Dated at San Francisco, California, this 9th day of April, 1921.

Frank D. Nelson
H. A. Loveland
H. B. Brundage
Dwight Martin

Commissioners.