

Decision No. 9037

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
FISHER & CASSATT for certificate of)
public convenience and necessity to)
operate Express Ice Service between)
Calexico, Heber, El Centro and Will-)
sie.)

Application No. 6508.

R. B. Whitelaw for Applicants.

H. W. Kidd and Rex Hardy for estate
of C. W. Curphey, deceased.

H. E. Hubbard as Trustee, in protest.

BY THE COMMISSION.

O P I N I O N

C. O. Fisher, et al., under the name of Fisher & Cassatt, apply for authority to operate a so-called special ice service between Calexico, Heber, El Centro and Willsie, all in Imperial County, as contract carriers of ice only.

A public hearing upon the application was held by Examiner Westover at El Centro.

At the hearing leave was granted applicants' counsel to so amend, by interlineation, as to seek authority to operate as a common carrier, and by substituting a definite, proposed two-hour schedule between 6:00 A.M. and 6:00 P.M., in lieu of the proposed "indefinite schedule, service dependent upon public necessity and convenience"; and also to amend by withdrawing Willsie as a point proposed to be served.

It appears from the testimony that the service proposed is one highly specialized for the particular service of seven

lettuce packing sheds at Heber, which is about midway between El Centro and Calexico, and about six miles distant from each. The method of packing is to chop the ice fine and alternate it in layers between layers of head lettuce, packed in boxes or crates for shipment to eastern points and designed to keep cold and moist for periods of thirty days and sometimes longer. There is an ice plant at El Centro producing so-called snow ice, preferred by some packers, and a plant at Calexico producing so-called clear ice, preferred by other packers. The reason assigned in the application for need of the special service is that the "packers require express deliveries of ice upon immediate notice which the existing freight carrying lines and express companies on arbitrary schedules cannot offer nor attempt to serve."

During the packing season of December, January, February and March, to which period it is proposed to limit the service, the seven packers are at times (when operating to capacity) required to pack as many as 40 cars of lettuce per day. Each car requires about six tons of ice. The ice requirements of the packers are very irregular, depending upon the receipts of lettuce from the fields, and fluctuate between 60 to 240 tons. As the amount of labor required in packing is relatively very large and expensive, delays in the receipt of ice are necessarily very costly. It will be seen that the requirements of the packers are very exacting and difficult to be met on the mere operation of a fixed schedule.

All of the points in question and many other points in the Imperial Valley are served by the lines ^{formerly} of C. W. Curphey, now deceased, which will be hereinafter referred to as the Curphey lines. A special administrator has been appointed for the property by the Superior Court of Imperial County, and the organization

maintained by Mr. Curphey kept intact and the property operated as usual upon regular schedules.

It appears from the testimony that a number of complaints arose as to the service given these lettuce packers by Mr. Curphey. It is their belief, as expressed in testimony at the hearing, that the only safe, adequate service for their special needs is the maintaining of at least one truck at Heber, subject to their call on very short notice, and the probable necessity of dividing truck loads of ice between various packers when several are packing at one time, so ^{they may} keep their employes busy and prevent heavy loss.

It appears that, owing to usual and ordinary delays in getting trucks for emergency service from the El Centro headquarters of the Curphey lines to Calexico and back to Heber (these delays being incident to usual truck operations and to occasional delays in telephone service over long distance lines connecting these towns), the packers tried two or three plans, - one being the operation of their own trucks, another the purchase of ice by one who bought from the ice companies and resold to the lettuce packers, and a third plan being that of employing the firm of Fisher & Cassatt, then composed of three of the present five partners. It was found that the Fisher & Cassatt service was very satisfactory to the packers, although it was admittedly illegal and never authorized by the Commission.

It is shown by the testimony, however, that the Curphey lines have abundant equipment for the handling of the business and are very desirous of performing this service, and although it appeared that Mr. Curphey, during the last season, felt he was not in a position to maintain a truck steadily during the season at Heber for this express service, his representatives expressed their willingness to do so and to stand ready to supply additional serv-

ice from El Centro if necessary. It is the well established policy of the Commission to protect established, authorized carriers and utilities in the discharge of their respective public services so long as the public can obtain from them satisfactory service, and to give them the first opportunity to render the service required, but if it develops that they cannot satisfactorily render the service, to then permit others to enter the field. Applying these principles, we will deny the application for the present, but with express leave to applicants to file new application if it develops at the beginning of the lettuce packing season that the Curphey lines are unable or unwilling to render the highly specialized service demanded.

At the time the service was rendered by Fisher & Cassatt, they believed that they were not operating as a transportation company within the meaning of the Public Utilities Act and that it was, therefore, not necessary to procure prior authority from the Commission, but it will be seen that their operations, above described, fall within the definition contained in the Act, as they were transporting goods for compensation over a regular route as well as between fixed terminals. It should be noted that mere irregularity in schedule or operating without schedule or operating with full or part loads, either to one or more consumers, are not referred to in the definition as elements for determining whether the operator is a transportation company within the meaning of the law. (Section 1(c), Chapter 213, Statutes of 1917, as amended by Chapter 260, Statutes of 1919, Page 457).

O R D E R

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

THE RAILROAD COMMISSION HEREBY FINDS that public convenience and necessity do not require the operation by C. O. Fisher, M. J. Cassatt, C. C. Cassatt, H. R. Cassatt, and J. W. Asher, or any of them, of any transportation service between Calexico and El Centro or Heber.

IT IS HEREBY ORDERED that the application be and it is hereby denied.

Dated at San Francisco, California, this 3d day of

June
~~May~~, 1921.

H. D. Benedict

H. D. Loveland

H. D. Benedict

Commissioners.