

Decision No. 9903

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of THE MONTEREY, SAN FRANCISCO EXPRESS COMPANY for certificate of public convenience and necessity to operate contract motor transit express service between San Francisco and/or San Jose and San Juan, Salinas, Monterey, Pacific Grove, Carmel City and Carmel Highlands and inter-locally between San Jose, Salinas, Monterey, Pacific Grove, Carmel City and Carmel Highlands.

ORIGINAL

Application No. 7186.

F. A. Treat for Applicant.
L. N. Bradshaw for Southern Pacific Co.
and American Railway Express Co.
A. C. Campbell for Fred Wermuth.

BY THE COMMISSION.

O P I N I O N

Public hearings were held by Examiner Westover at Monterey upon the above application to operate express truck service under contract between San Francisco, Monterey and Salinas, and points south of San Jose, and locally between San Jose and San Juan, Salinas, Monterey, Pacific Grove, Carmel and Carmel Highlands, service to be rendered one round trip daily, six days per week.

Witnesses testified to need of better service for the accommodation of poultry shippers on the route about two miles from Monterey, general service for Carmel Highlands, an expedited service for newspapers to Monterey and Salinas, bread and meat to Monterey, and fresh fish from Monterey.

The poultry shippers referred to would have the advantage of a pick-up and delivery service at their plants, and believe that they would secure the advantage of a prompt weighing of live poultry

on arrival at San Francisco wholesale houses. They have been assured by applicants that drivers making deliveries would wait and see the poultry weighed. It is alleged that at present the San Francisco dealers keep poultry two or three days without food or water, then weigh them and make settlement.

The proposed service leaving San Francisco at 9:00 P.M., as shown by amended schedule filed by leave since the hearing, would be too early to carry the week-day editions of the San Francisco morning papers dated the following day. The week-day editions are now carried by train leaving San Francisco at 2:00 A.M., and arriving at San Jose at 3:50 A.M. Those for points farther south leave on Train No. 73 at 8:00 A.M. the following morning, reaching Monterey about noon. Sunday editions leave on Train No. 110 at 8:15 P.M. and are met at Del Monte Junction at 11:44 P.M. by the Monterey distributors. As the proposed service, under its amended schedule, would leave San Jose at 1:30 A.M., over two hours before the week-day editions arrive at San Jose and would reach Monterey about six hours later than the Sunday editions now arrive there, it is clear that the proposed service would not be available for handling San Francisco newspapers.

The present express service is rendered by American Railway Express Company, operating seven round trips daily over the lines of the Southern Pacific Company, with free pick-up and delivery at practically all points. San Juan and Carmel are served by stages meeting each train. Monterey is served daily by four trips southbound and three trips northbound. The bulk of the business is handled by train leaving San Francisco at 8:15 P.M. and arriving at Monterey at 7:00 A.M. the following morning. Applicant now proposes to leave San Francisco at 9:00 P.M. and arrive at Monterey at 6:30 the following morning. The express company delivers locally by horse and wagon, while the applicant proposes to transfer ship-

ments and deliver locally by truck. It does not clearly appear from the testimony that applicant would be able to improve the local delivery service.

In addition to the present express service between Monterey and Carmel, there is an authorized truck service operated regularly by Fred Wermuth between those points. He also makes special trips when needed between Carmel and Carmel Highlands, a distance of about five miles. Several witnesses testified to the excellence and dependability of his service and that he makes deliveries at night and on Sundays when required for the accommodation of his patrons.

Applicant herein previously applied, by Application No. 5736, for authority to operate an express service as a common carrier between all of the points above referred to, except Carmel and Carmel Highlands, and except that the service now proposed between Salinas and Monterey is via Castroville instead of direct. The previous application also sought authority to serve in addition the territory lying between San Juan and Santa Cruz and that between Salinas and King City. At the hearing upon the former application considerable testimony was introduced concerning the need of facilities for shipping fresh fish from Monterey to San Francisco late in the afternoon after the fishermen come in.

Before the former application was finally submitted, the express company had instituted such a service to be operated over the Southern Pacific lines by train then leaving Monterey at 6:25 P.M. At the hearing herein, it developed that this new express service, which had been put on May 1st, was withdrawn July 22nd for lack of patronage. There had also been some complaint that shippers were required to deliver fish to the express company at the mainland end of the wharf. Applicant proposed to take the fish from shippers' locations on the wharf.

So far as the oral testimony ^{herein} is concerned, it shows only a need for improved service for the handling of fresh fish from Mon-

terey and poultry and poultry products from territory adjacent to Monterey, and authority to operate such/^{limited} service as common carriers will be found in the order herein.

However, applicants have procured certain tentative contracts (subject to procuring authority from the Commission) for the handling of goods in the territory in question. These contracts provide for northbound shipments, in above territory, one of cheese from Carmel, one of fish and abalones from Monterey, two of poultry and poultry products from near Monterey, and service for two shippers at San Juan, above shipments being estimated at a total of about 5000 pounds daily. The list of shippers and receivers of goods so contracting contains five in San Francisco shipping meat and bread, four at San Juan, five at Salinas, four on the highway near Monterey, twenty-four at Monterey, two at Pacific Grove, and four at Carmel and Carmel Highlands. The estimated southbound movement is also about 5000 pounds per day. These estimates of tonnage, however, are supplied only in an exhibit filed after the hearing and pursuant to stipulation made at the hearing. It is not claimed that the estimates of tonnage show prospective business with any degree of accuracy, as contracting shippers in most instances were not present and testifying, and the figures are offered merely as estimates by those who had talked with shippers.

It was not shown by these documents or the persons who signed them that the present service is inadequate to the needs of the community or that they had any criticism of the manner in which the service is rendered, nor of particulars in which it can be improved. Most of those signing the contracts were not present for examination or cross-examination on above points or others, nor was it shown what induced the signatures. It has frequently developed in other hearings that those signing petitions or resolutions

or documents requesting authority for certain applicants, find that the proposed service, as developed by the testimony at such hearings, could not be used by such petitioners or others similarly situated, and that it would not prove even a convenience in many instances.

Applicants' previous Application No. 6736 for authority to operate as a common carrier was very fully presented, numerous witnesses were examined, and after careful consideration of all the evidence the application was denied. The only material difference in form between the previous and the present applications, is that applicants now seek to operate "under contracts" which provide that applicants shall carry all of the shipments of signers for a fixed term at scheduled rates. If granted, this would enable them at their option to serve only a selected class composed of such contract holders, although still nominally under the regulation of the Commission as to such class. The proposed service would not be available to the general public.

A misapprehension seems to have arisen as to the intent of the amendment to the statute at the 1919 session of the Legislature. It seems to be assumed that the intent was to provide, in addition to regulation of common carriers, regulation of a class which has come to be known as "contract carriers", operating under contracts for the carriage of goods, even though these contracts might, for illustration, be discriminatory in terms as between different contract shippers, or might result in limiting carrier's facilities to present equipment or to operation at his convenience, or enable him to confine his service to a limited selected class, thus discriminating between shippers, or in other manner to restrict the nature and therefore the value of his service to the community; and that all that is necessary to procure authority to act as a contract carrier is procure and present such contracts. We are

satisfied that such was not the intent of the Legislature, but rather to extend the regulatory powers of the Commission by the amendment, to all those "engaged in the business of transportation of persons or property for compensation over any public highway in this State between fixed termini, or over regular routes not operating exclusively within the limits of incorporated cities or towns", but excepting taxicabs, hotel busses or sightseeing busses. Public necessity and convenience rather than the private convenience or benefit of the carrier or shipper must still be shown. The method of proof is not changed by the amendment.

It has not yet been found necessary in the course of such regulation to separate into classes those placed by the Legislature under the Commission's jurisdiction. Those desiring to carry special commodities, such as milk, and those desiring to engage in seasonal operations, such as carriage of fruits, can be authorized to operate as common carriers of those commodities under appropriate limitations or conditions.

It appearing from the testimony that the traffic situation in and about Monterey having so changed since the hearing of the previous Application No. 6736, so that there is now a public necessity and convenience to be served by applicants as common carriers of fish and abalones, poultry and poultry products, such service is authorized by the order herein.

ORDER

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

THE RAILROAD COMMISSION HEREBY DECLARES that public convenience and necessity require the operation by S. M. Trotter, F. D. Warnock, A. C. Hinkle, and Geo. A. Hartz, as co-partners, of an automotive express service, under the fictitious name of The San Francisco-Monterey Express Company, between San Francisco and

Monterey and points on the highway for a distance of five miles easterly of Monterey, for the common carriage of fresh fish, abalones, poultry and poultry products, and poultry feed, equipment, and supplies for delivery to or from poultry ranches along the highway to be traversed by applicants within a distance of five miles easterly from Monterey.

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 applicants herein or is leased by said applicants under a contract or agreement satisfactory to the Railroad Commission.

IT IS HEREBY ORDERED that applicants shall, within fifteen days from the date hereof, file with the Railroad Commission their schedules 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 thirty 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 20th day of December, 1921.

H. P. ...
H. D. ...
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Commissioners.