

Decision No. 25905

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

REGULATED CARRIERS, INC., a corporation,
Complainant,

vs.

EDWIN HODGES, CHARLES GOODELL, and EDWIN
HODGES and CHARLES GOODELL doing business
under the fictitious name and style of
Hodges and Goodell Freight Line, FIRST
DOE, SECOND DOE, THIRD DOE, FOURTH DOE,
FIFTH DOE, FIRST DOE CORPORATION, SECOND
DOE CORPORATION, THIRD DOE CORPORATION,
FOURTH DOE CORPORATION, FIFTH DOE COR-
PORATION,
Defendants.

Case No. 3511.

ORIGINAL

In the matter of the application of
E. P. HODGES and CHARLES GOODELL, a co-
partnership doing business under the
firm name and style of Plymouth Truck,
(Hodges & Goodell Freight Line) for
certificate of public convenience and
necessity to operate a freight service
as a common carrier between Sacramento,
California, and Plymouth, California.

Application No. 18721.

Anthony J. Kennedy and Thomas O'Hara for Applicants
and Defendants.

Reginald L. Vaughan & Scott Elder, by Williard S.
Johnson, for Complainant.

Roy G. Hillebrand for Southern Pacific Company and
Pacific Motor Transport Company, interested
parties.

Snyder & Snyder, by W. G. Snyder, for Piccardo Bros.
(Amador County Freight Lines).

W. G. Stone for Sacramento Chamber of Commerce, in
favor of Applicant.

WARE, COMMISSIONER:

O P I N I O N

By complaint (Case No. 3511) filed on February 15, 1933,
complainant, Regulated Carriers, Inc., a corporation, charges the
defendants, Edwin P. Hodges and Charles Goodell, with unlawful
common carrier operations by auto truck between Sacramento and

Plymouth.

In the matter of the application (No. 18721) filed on February 20, 1933, the said Edwin P. Hodges and Charles Goodell, as co-partners doing business under the firm name and style of Hodges & Goodell Freight Line, seek from this Commission a certificate of public convenience and necessity to operate a freight service as a common carrier between Sacramento and Plymouth, confining their operation to freight originating in Sacramento and destined to Plymouth, and vice versa.

Said case and application, being inseparably related, were set for hearing at Sacramento on April 25, 1933, at which time and place all parties appearing stipulated, and an order was made by the presiding Commissioner that the hearing of both matters be consolidated, whereupon the entire evidence was adduced and submitted and both matters are now ready for further order and decision.

The facts as developed at the hearing may be summarized briefly as follows:

Between 1913 and January 17, 1929, one O. E. Harrell held himself out to the public as a common carrier of property, for hire, between Sacramento and Plymouth, operating over the public highway connecting said termini and passing through Perkins and Slough House. Until the summer of 1916, he hauled the freight entrusted to him by animal-drawn vehicles; thereupon, in response to his increased patronage and in order to afford the shippers a more adequate and convenient service, he advanced to motor truck equipment.

In January, 1929, Mr. Harrell sold his trucks, equipment, business and the good will thereof to the defendants and applicants

herein, the said co-partners Edwin P. Hodges and Charles Goodell, who have continuously thereafter maintained the same common carrier service.

These controlling facts having been established, it becomes noteworthy that the attack of complainant, Regulated Carriers, Inc., against the applicant co-partners, collapsed in mid-trial; and the attorney for the complainant properly proposed what would be the inevitable dismissal of Case No. 3511, should the records of this Commission disclose an order approving the transfer from the veteran carrier Harrell to co-partner applicants.

C.R.C. Decision No. 29691 dated January 17, 1929, authorized the request filed by Harrell on January 5, 1929, to sell his freight service to the defendants Hodges and Goodell. Thereafter these defendants, pursuant to said order and on March 9, 1929, filed their tariffs and time schedules with this Commission. The defendants thereafter continuously maintained their lawful enterprise with the apparent knowledge and approval of all saving Regulated Carriers, Inc.. Surely a dismissal of Case No. 3511 is now most timely.

Further in support of the decision which follows, relating to Application No. 18721, the record shows with conclusive clarity these facts: Sacramento industries dealing in lumber and wholesale supplies of groceries, meats, hardware and general merchandise have been continuously and regularly patronizing the service just accounted for, since 1916. A representative group of active and prominent business men, merchants and officials of Plymouth testified that, excepting for said service, there has been, and is, no other adequate and satisfactory service by any carrier, common or private, certificated or unlawful, serving the

termini involved herein. All of the witnesses confirmed the facts that shipments by rail from Sacramento to Plymouth via transfer to trucks at Ione or Latrobe, was undesirable, inconvenient, comparatively costly,¹ and attended with intolerable delays;² that the common carrier service of applicants and their predecessor has been continuously dependable, prompt, economic, necessary, convenient, adequate, and entirely satisfactory.

Plymouth was shown to be a community of approximately 1200 inhabitants, all more or less dependent upon this existing and proposed service. Eighty-five per cent of the freight reaching Plymouth originates in Sacramento and of this total the applicants have handled annually in excess of 500 tons. The Montezuma Apex Mine Company is a thriving enterprise situated near Plymouth and is also materially dependent upon the perpetuation

Price in cents per 100 pounds.

1. (a) Comparison of existing rate schedules Sacramento-Ione via P.M.T., thence to Plymouth via applicant:

<u>FIRST</u>	<u>SECOND</u>	<u>THIRD</u>	<u>FOURTH</u>	<u>GROCERIES</u>	<u>HARDWARE</u>
70	66	61	57	57	57

(b) Comparison of existing rate schedules Sacramento-Latrobe via P.M.T., thence to Plymouth via applicant:

<u>FIRST</u>	<u>SECOND</u>	<u>THIRD</u>	<u>FOURTH</u>	<u>GROCERIES</u>	<u>HARDWARE</u>
67	61	56	50	50	50

(c) Applicant's proposed rate schedules Sacramento-Plymouth:

<u>FIRST</u>	<u>SECOND</u>	<u>THIRD</u>	<u>FOURTH</u>	<u>GROCERIES</u>	<u>HARDWARE</u>
40	36	32	30	#30 *20	30 *20

#Flour, Grain, Fresh Fruits and Vegetables 20¢ any quantity.
*Ton Lots (2,000 pounds)

2. Sometimes such shipments have required three days in transit, Sacramento to Plymouth, a distance of 39 miles.

of this transportation. Sacramento's Chamber of Commerce and the City Council of Plymouth have joined in urging the granting of the certificate as prayed for.

During the hearing applicants distinctly assured the Commission that they would confine their services, if so permitted by this Commission, to the hauling of freight originating in Sacramento and destined to Plymouth, and vice versa. Thereupon, the opposition of Southern Pacific Company and Pacific Motor Transport Company was withdrawn, and the hearing was concluded in the absence of anyone opposing this application. We are of the opinion that public convenience and necessity require the operation as a common carrier of the service now rendered by applicants, and that the application should be granted subject to the restrictions hereinafter set forth in the order.

E. P. Hodges and Charles Goodell, co-partners, doing business under the firm name and style of Hodges & Goodell Freight Line, are hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

O R D E R

A public hearing having been held in the above entitled proceeding, and the matter having been submitted:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the

operation by E. P. Hodges and Charles Goodell of an auto truck service for the transportation of property between Sacramento and Plymouth, provided that no local service may be given from, to or between any point intermediate to said termini.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such service be and the same is hereby granted to said E. P. Hodges and Charles Goodell subject to the following conditions:

1. Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicants shall file in triplicate and make effective within a period of not to exceed thirty (30) days from the date hereof, on not less than ten days' notice to the Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the application in so far as they conform to the certificate herein granted.
3. Applicants shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from date hereof, on not less than five (5) days' notice to the Commission and the public, time schedules, according to form provided in General Order No. 83, covering the service herein authorized, in a form satisfactory to the Railroad Commission.
4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.
5. No vehicle may be operated by applicants herein unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

IT IS HEREBY FURTHER ORDERED that Case No. 3511 be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of May, 1933.

C. L. Seavey
Leon Aubrey
M. J. Lee
W. B. Harris
Nathan K. ...
Commissioners.