

Decision No. 28647

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of)
J. D. MAYNARD and J. W. MAYNARD for	
authority and order of said Commission	(
to reopen Application No. 11183 before	Amended
said Commission, filed herein in) Application No. 11183.
May, 1925.)

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WHEITSELL, Commissioner:

OPINION AND ORDER

Applicants J. D. and J. W. Maynard, co-partners, herein request the Commission to set aside its order of dismissal herein (Decision No. 17217, dated August 13, 1925), and to reinstate the application for further consideration by the Commission.

The merits of this application were thoroughly presented at a hearing before me at San Jose in Case No. 3385, Regulated Carriers vs. J. D. and J. W. Maynard, and we found by Decision No. 25842 that the service now conducted by applicants, (which is substantially the same as conducted by applicants since 1921, and to and from the same points), is a common carrier service between fixed termini and over a regular route and requires certification by this Commission under Chapter 213, Acts of 1917, and amendments thereto. This decision also found that applicants, in the utmost good faith, had tried to adjust their operations to legal status, once by obtaining a partial certificate and again by application, which is now sought to be reopened. This decision (No. 25842) reviews the facts and the order provided that applicants should cease and desist their operations within sixty (60) days, unless applicants petitioned for the reopening of

Application No. 11183, herein, or filed a new application. Applicants have elected the first remedy and seek the granting of the application as originally presented, (except for minor changes) including the rates then proposed. As the service is "on call" no time schedule is offered, because of the sporadic origin of cargo and necessities of the season. The operations are conducted almost wholly between May and November and only for field, bush and orchard products moving to San Francisco and Oakland. No back haul is proposed except empty containers, seeds and merchandise ordered by shippers.

I do not find that this is a matter in which a public hearing is necessary, as the Commission is in full possession of the facts and equity appears to require the granting of the application. I propose the following form of Order:

O R D E R

IT IS HEREBY ORDERED that Application No. 11183, herein, be and the same hereby is reopened for further consideration and that Decision No. 17217, dated August 13, 1925, be and the same hereby is revoked and annulled.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation of an auto truck service for the transportation of strawberries, blackberries and raspberries; all kinds of garden and vegetable seeds, and all kinds of vegetables, principally lettuce, peas and tomatoes; also all kinds of green and dried fruit, including cherries, apricots, peaches, pears, prunes and apples between Sargent, Betabel, Gilroy, San Martin, Morgan Hill, San Jose, Santa Clara, Sunnyvale, Los Gatos and Campbell and intermediate points and from such points and seven (7) miles on either side of the highways traversed to San Francisco and Oakland, with return movement of empty containers or seed and such articles of

merchandise as may be ordered by ranchers and packing plants served by applicants at the points and area herein authorized, over and along the following route:

Via U.S. Highway No. 101 between Sargent and Santa Clara and State Highway between San Jose and Los Gatos, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted to J. D. and J. W. Maynard, co-partners, 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 days' notice to the Commission and the public, time schedules 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.

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.

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

Dated at San Francisco, California, this 12 day of June, 1933.

Chas. E. Leary
Leon A. Dwyer
M. J. Carr
W. B. Harris
W. H. ...
Commissioners.