

Decision No. _____

28267

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
C. R. BENEDICT and E. T. BROWN, co-
partners, doing business under the
fictitious firm name of Huntington
Park-Los Angeles Daily Transfer,
for a certificate of public convenience
and necessity for the transportation by
motor trucks of railroad traffic
between the station of The Atchison,
Topeka and Santa Fe Railway Company at
56 Street and Malabar Avenue in the
County of Los Angeles adjacent to the
City of Los Angeles, and the towns of
Huntington Park, Vernon, Maywood, and
parts of the towns of South Gate and
Bell, and certain portions of Los
Angeles County adjacent thereto, under
contract with said Railway Company.

ORIGINAL

Application
No. 16802.

Edgar T. Brown, for applicant.
E. T. Lucey, interested party.
E. B. Bennett, for the Los Angeles and Salt
Lake Railroad Company.

W. K. Downey and G. C. Foster, by G. C. Foster,
for Motor Freight Terminal Company, protestant.

H. P. Merry, for Rice Transportation Company,
Coast Truck Line and Motor Service Express,
protestants.

L. R. Kagerise, for Keystone Express System,
protestant.

BY THE COMMISSION:

O P I N I O N

Applicant herein seeks a certificate of public con-
venience and necessity to perform, by contract with The Atchison,
Topeka & Santa Fe Railway Company, transportation of freight
in transit to and from warehouses, factories, stores and similar
places of business and the railroad station of Santa Fe at

56th Street and Malabar Avenue in the County of Los Angeles. Applicants Benedict and Brown have for many years been operating under the name of Huntington Park-Los Angeles Daily Transfer under authority of Decision No. 22122, on Application No. 16195, serving as intermediate points Vernon, Bell, Florence, Graham Station, Miramonte, Watts, Cudahy Ranch, Walnut Park, Fruitland and Southgate Gardens. A copy of the contract between Santa Fe railroad and Benedict and Brown, co-partners, provide for the transportation of freight between the station at Malabar Avenue and 56th Street and points within the pickup and delivery area of Santa Fe railroad as filed with this Commission. The rate agreed upon is 6 cents per 100 pounds up to 4167 pounds, \$2.50 per shipment between 4167 and 5000 pounds, and over 5000 pounds 5 cents per 100 pounds.

E. T. Brown, one of the copartners, testified that the contract executed March 28, 1932 had been entered into in the belief that it was not of a nature that conflicted with the established utility business of the partnership as a freight trucking concern and that no certificate was required therefor. This seems, too, to have been the attitude of the railroad. The charge for any service is paid and borne by the Santa Fe and is absorbed into its freight rates. It happens that a large part of the pickup and delivery area filed by Santa Fe Railroad almost completely covers the area served by applicants under their certificates and also served by other truck companies who appeared in protest.

Attention was called to the fact that the 6 cent rate at which service was performed for Santa Fe Railroad was a different and lesser rate than the 15 cents charged by Benedict

and Brown for other transportation. Brown explained that any service performed for Santa Fe which did not come under this contract had been and would be charged at the full tariff rate of the truck carrier.

Protestants did not produce any testimony other than as above stated nor did they offer any assurance that either could perform the service if requested to do so.

In many instances the Commission has authorized the execution of contracts between common carriers for exactly the same service as is proposed in the present application. Pacific Motor Trucking Company, Railway Express Agency, Inc. and others have received certification for the transportation of pickup and delivery freight in many parts of California under similar contracts. We can recognize no difference in the present situation.

There appears to be no reasonable justification for protest. The application will be granted.

Applicants should file in full with the Commission the rates to be charged and the schedules of operation as set forth in the exhibits filed with this application.

O. R. Benedict and E. T. Brown 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

O. R. Benedict and E. T. Brown, copartners, doing business under the fictitious firm name of Huntington Park-Los Angeles Daily Transfer, having made application for a certificate of public convenience and necessity for the transportation by motor truck of railroad traffic between the station of the Atchison, Topeka & Santa Fe Railway at 56th Street and Malabar Avenue, County of Los Angeles, and a certain area including a portion of Huntington Park, Vernon, Maywood, Southgate, Bell and certain unincorporated territories in the County of Los Angeles, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
HEREBY DECLARES that public convenience and necessity require the establishment of the service as proposed by applicant over and along the streets and avenues described in the following boundaries:

Beginning at the intersection of East 25th Street and Alameda Street (Vernon-Los Angeles City Limit boundary), thence southerly on Alameda Street to Firestone Boulevard, thence easterly on Firestone Boulevard to Atlantic Avenue, thence northerly on Atlantic Avenue to Patata Street, thence easterly on Patata Street to Wilcox Avenue, thence northerly on Wilcox Avenue to Randolph Street, thence easterly on Randolph Street to Garfield Avenue, thence northerly on Garfield Avenue to Anaheim-Telegraph Road, thence northerly on Anaheim-Telegraph Road to Casper Avenue, thence easterly and northerly on Casper Avenue to Camfield Avenue, thence westerly on Camfield Avenue to Anaheim-Telegraph Road, thence northerly on Anaheim-Telegraph Road to Goodrich Avenue, thence northerly on Goodrich Avenue to East 9th Street, thence easterly on East 9th Street to Gearhart Avenue, thence westerly on East 9th Street to Los Angeles City boundary line, thence southerly along Los Angeles City boundary line to Vernon City boundary line, thence westerly along Vernon-Los Angeles boundary line to starting point,

for the transportation of freight between warehouses, factories and stores or similar places of business of shippers located within the described area and the railroad station aforesaid of The Atchison, Topeka & Santa Fe Railway Company and/or vice versa and no other service; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted, subject to the following conditions:

1. The authority herein granted is for the transportation under contract only of property within the pickup and delivery zone of Santa Fe Railway and only to and from the railway company's station at 56th and Malabar Avenue and no other service.
2. That pickup and delivery may be made only in so far as the shipments tendered or transported shall cover only points for which the Santa Fe has pickup and delivery tariff now on file with this Commission.
3. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.
4. Applicant shall file in duplicate within a period of not to exceed twenty (20) days from date hereof copies of the contract between applicant and Southern Pacific Company relating to the operation herein directed to be certificated, and, in triplicate, the rates to be charged, and, in duplicate, time schedules, said rates and time schedules to be satisfactory to the Railroad Commission. Applicant shall commence operation of said service within a period of not to exceed sixty (60) days from date hereof.
5. 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.
6. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it 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.

Dated at San Francisco, California, this 21st day of August 1933.

O. J. Leary
Leon J. Sullivan
M. A. Carr
M. B. Haines

COMMISSIONERS.