

Decision No. 26279

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of ASBURY TRUCK COMPANY, a Corporation, for a certificate of public convenience and necessity to operate an automotive transportation service as a common carrier for the transportation of oil well supplies, heavy machinery, pipe, steel, tanks, gasoline and petroleum products, between Long Beach and Los Angeles Harbor points (including Wilmington and San Pedro) and the City of Los Angeles proper via Alameda Street (Truck Boulevard) with branches extending to Watts and Inglewood; between Long Beach and Los Angeles Harbor points (including Wilmington and San Pedro) and Los Angeles proper via Long Beach Boulevard and Santa Fe Avenue and intermediate points; between Long Beach and Los Angeles Harbor points (including Wilmington and San Pedro) and Los Angeles proper and intermediate points, via Harbor Boulevard with branches extending to Torrance and Hawthorne; between Los Angeles and Santa Monica Bay points including Venice and Ocean Park, serving intermediate points including Culver City; between Long Beach and Los Angeles Harbor points (including Wilmington and San Pedro) and Salinas and intermediate points via Roosevelt Highway and U. S. Highway 101, with branches extending as follows: (a) Ventura to Santa Paula via Ojai, (b) Ventura to Castaic Junction, (c) Santa Maria to Maricopa, (d) Santa Margarita to Bakersfield, (e) Paso Robles to Famoso, (f) San Lucas to Fresno, (g) Salinas to Fresno, (h) Coalinga to Blackwell's Corner, (i) Mendota to Oilfields; between Los Angeles and Salinas and intermediate points via Ventura Boulevard and U. S. Highway 101; between Los Angeles and Ventura and intermediate points via Santa Susana Pass Road; between Los Angeles and Fresno and intermediate points via U. S. Highway 99 with branch routes extending as follows: (a) from Junction of U. S. Highway 99 and Maricopa Road to McKittrick, (b) from Bakersfield to Mojave; (c) from Delano to Visalia via Porterville, (d) from Kingsburg to Fresno via Dinuba, between Los Angeles and Bishop and intermediate points via Mint Canyon Road and Midland Trail, with branches extending as follows (a) from Mojave to Barstow, (b) from Mojave to Johannesburg; between Los Angeles and Needles and intermediate points via U. S. Highway 66 with branches extending as follows: (a) from Junction of U. S. Highway 66

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and Sierra Madre Road to Sierra Madre, (b) between Barstow and Calada via U. S. Highway 91, (c) between a point approximately twelve miles east of Amboy on U. S. Highway 66 and west bank of Colorado River opposite Parker, Arizona; between Los Angeles and El Centro and intermediate points via U. S. Highway 99 with branch routes extending as follows: (a) from El Monte to Pomona, (b) from U. S. Highway 99 to Chino, (c) between Coachella and Blythe via U. S. Highway 60, (d) between Westmoreland and Calipatria, (e) between El Centro and west bank of Colorado River opposite Yuma, Arizona, (f) between El Centro and Calexico; from Los Angeles to San Diego and intermediate points via U. S. Highway 99, (Inland Route) with branches extending as follows: (a) between Perris and San Jacinto, (b) between Escondido and Kane Springs; between Los Angeles Harbor points (including Wilmington and San Pedro) and San Ysidro and intermediate points via Roosevelt Highway and U. S. Highway 101 with a branch extending as follows: (a) between San Diego and El Centro via U. S. Highway 80; between Los Angeles and San Ysidro and intermediate points via U. S. Highway 101, with a branch extending as follows: (a) between Fullerton and San Bernardino via Santa Ana Canyon Road.

- Rex W. Boston, for the applicant.
- H. J. Bischoff, for Motor Service Express, Rice Transportation Company and Coast Truck Line, protestants.
- E. T. Lucey and W. T. Quirk, for The Atchison, Topeka & Santa Fe Railway Company, protestants.
- Chas. A. Bland, for the Board of Harbor Commissioners of the City of Long Beach.
- R. O. Baldwin, for the Long Beach Chamber of Commerce.
- C. W. Cornell and A. E. Norrbom, for Southern Pacific Company, Pacific Motor Transport Company and Pacific Electric Railway Company, protestants.
- E. E. Bennett, E. C. Renwick and W. E. Love, for the Los Angeles & Salt Lake Railroad Co., protestant.
- Wallace K. Downey, for Motor Freight Terminal Company, Valley Motor Lines, Inc., Frasher Truck Line and Valley Express Co., protestants.
- J. R. Zimmerman, for the City Transfer & Storage Co., protestant.
- Owen C. Emory, for Western Truck Line, Inc., protestant.

CARR, Commissioner:

O P I N I O N

By order of date December 1, 1927 (Re Asbury Truck Company, 30 C.R.C. 710) the Commission granted Asbury Truck Company a certificate to operate a transportation service over eleven specified routes in the southern part of the State for the transportation of "oil well supplies, heavy machinery, pipe, steel and tanks ***** in truck-load quantities with a minimum load of 4000 pounds between any terminus or intermediate points on any of the above mentioned routes to any terminus or intermediate point on any other route."

Subsequently, Asbury Truck Company requested an interpretation of its rights under the certificate, including a determination that the certificate covered the right to transport for a distance of thirty miles on either side of the routes as to which the certificate was granted. This application resulted in an opinion and order, of date March 9, 1931, (Decision 23490) in which it was held:

(a) That no authority was conferred "for the transportation of any commodity to any point located off the highway between termini on the eleven authorized routes."

(b) That the term "oil well supplies" "covers a variety of commodities which may be used in connection with the establishment or dismantling of an oil well, including provisions for labor while so employed in any specific oil well field, when such field is located at the terminus or at any intermediate point along the highway on any of the eleven routes as ** authorized" but that the expression "does not include the transportation of groceries and articles of general merchandise not directly associated with the construction or dismantling of an oil well, nor does it include the transportation of gasoline from oil fields, wells or refineries to gas stations or points of storage, or sale of such commodity to the

public, nor does it include the transportation of any commodities in less than truck-load lots when such commodities are not reasonably included within the term 'oil well supplies,' in truck-load lots as authorized by the existing certificate."

The original certification order, proceedings leading up to such order, and subsequent proceedings have been the occasion of somewhat varied litigation in State and Federal Courts, details of which it is unnecessary to relate. Suffice it to say that the action of the Commission has been fully sustained and that the rights of the Asbury Truck Company to operate as a transportation company are those defined in the certification order first referred to and as interpreted in the interpretative order, to which reference has been made.

Applicant now seeks a new certificate of public convenience and necessity "in lieu of the certificate heretofore granted to it by Decision No. 19067 *** and Decision No. 23490 *** which is to be revoked and annulled in the event the certificate sought herein is granted." What the applicant here seeks is in effect

- (a) The removal of all weight limitations,
- (b) The addition to the original routes covered by its certificate of several new routes.
- (c) Lateral rights of 25 miles on either side of specified routes, and
- (d) Authority to transport gasoline and petroleum products in addition to the articles now authorized to be transported. (1)

1. The scope of the application is well expressed by one of the protestants in its brief, as follows:

"When the scale of miles shown on the map in this proceeding is applied to the map, it is readily seen that applicant seeks rights to and from nearly all points located in the Southern half of California; the only portions of this part of the state being excluded are the mountains and desert regions where, at least at present, it is obvious that no freight could originate or move. In short, applicant seeks a right broader than any which now exist or has ever existed in this state, so far as territory is concerned."

This application was filed on January 3, 1933. On February 15, 1933, Regulated Carriers, Inc. filed its complaint against the applicant and others, charging illegal operations. On June 14, 1933, Motor Freight Terminal Company filed its complaint against the applicant, likewise charging illegal operations and requesting, amongst other relief sought, a revocation of the existing certificate. These complaint cases, numbered 3510 and 3605, respectively, have not as yet been heard.

Public hearings were held on the instant application on April 4, 5 and 6 and the matter has since been submitted on briefs.

The first tariff filed by the applicant was Local Freight Tariff No. 1, rule 6 of which was: "No load less than 4000 pounds accepted." Rates were per hour per truck, varying as to size and character of the truck. Subsequently, a tariff was submitted for filing which was rejected, and on March 18 Local Freight Tariff No. 3 was filed, effective April 17, 1929, which has since constituted the applicable tariff of the Asbury Truck Company. Basically, this tariff provides for per hour charges based upon the size of the conveyance. It seeks to interpret the somewhat ambiguous language of the interpretive order, quoted in the latter portion of (b) above by weight limit provisions set out in the foot note. (2)

Attached to the instant application is a proposed tariff giving in addition to hourly rates per truck optional rates in the form of mileage charges for varying weights. Rates proposed, according to Mr. Asbury, the chief witness in behalf of the application, would not result in an "out-of-pocket loss," interpreting that expression

2. "APPLICATION OF RATES:- (a) Hourly rates named herein apply to on demand service for the transportation of Oil Well Supplies, Heavy Machinery, Pipe, Steel and Tanks, in any quantity, between the terminus and between all the intermediate points shown in the list of Routes described below; (b) And will also apply on the same commodities when in truck load quantities with a minimum of 4000 pounds between any terminus or intermediate points on any of the above mentioned routes to any terminus or intermediate point on any other route.

as meaning "cash expended out of which the movement is made." The rates would result, however, according to his testimony, "in an operating loss, in that moneys which would otherwise be set aside as reserve for depreciation will not be earned." Again Mr. Asbury testified that the rates proposed would not show a reasonable return on investment.

The situation disclosed by the testimony was rather extraordinary. By the testimony of Mr. Asbury himself and by filed exhibits it was shown that the applicant

(a) Had paid no attention to the routes specified in his certificate but had operated as a transportation company hither and yon and wherever it pleased in the southern part of the State;

(b) That weight limitations contained in the certificate had been disregarded;

(c) That the basis of charges specified in applicant's filed tariff was frequently disregarded and rates and charges made according to the exigencies of each situation as it arose,⁽³⁾ and

(d) That the applicant paid no attention to the limitation in the certificate upon articles and commodities which could be transported but that instead it transported as a common carrier many articles and commodities not authorized by the certificate.⁽⁴⁾

3. Thus, Mr. Asbury testified that the applicant observed its filed tariffs until some two or three years ago when "it was necessary for us to deviate from those rates or go out of business. We chose to deviate." The rates set out in the application are, Mr. Asbury testified, "the rates we are using today."

4. Exhibit 5 presented by applicant shows a list of oil companies for which gasoline and petroleum products were hauled. Exhibits 3 and 4 show numerous shipments of gasoline. 60% of applicant's revenue is derived from this source. Vegetables have been hauled from Oceanside to the Los Angeles market. Referring to gasoline and petroleum products, "We have" Mr. Asbury testified "served all shippers who have tendered their shipments, and were able to pay the rates."

During the first half of the year 1931 this Commission conducted an extensive investigation of transportation conditions as they had developed in this State. Many public hearings were had and scores of witnesses examined. On October 10, 1932 the conclusions reached were expressed in a formal opinion or decision (Dec. No. 25243). In this it was pointed out in effect that an intolerable situation had developed in that "some of the transportation agencies are rigidly regulated, some are or may be partly regulated and some are not regulated at all." The public interest, it was said, "demands that regulation be extended alike over all or that it be withdrawn from all and the law of the jungle be given full and equal play." The ineffectiveness of the present scheme of regulation of truck transportation, devised when this industry was in its infancy, was recognized. Which of the two courses should be followed was, it was pointed out, "a matter of state policy to be determined by the Legislature." The fiftieth session of the Legislature has since been held. Proposed legislation tending towards each of these two suggested policies was under consideration. No action, however, was taken. Under the circumstances, the only course left to this Commission is to exercise its regulatory authority as it affects truck transportation along the same general lines heretofore pursued.

Running through the various decisions of this Commission in passing upon applications for certificate of public convenience and necessity to inaugurate or extend a trucking service, there may be found expressed the principle that an applicant whose operations have been illegal will not, in the absence of excusable mistake or of a clear and convincing public necessity or other special circumstances, be granted new or additional rights to legalize that which had been done illegally. Without running counter to this salutary principle, the instant application cannot be granted. While the

vagueness and ineffectiveness of the certificate granted, to which further reference will be made, might excuse some of the applicant's violations, they cannot excuse his complete disregard of territorial limitations, his disregard of filed tariffs and his open transportation of gasoline and petroleum products. Doubtless the granting of the application would prove beneficial to the applicant, but the record is not convincing that the shipping public would suffer any appreciable inconvenience in the absence of the extended service as proposed. In addition to available rail facilities there are various existing certificated carriers serving the territory.

That there is a need for a specialized service covering heavy machinery, pipe, steel, tanks and oil well supplies in truck-load lots was clear to the Commission when the original certificate was granted. Unfortunately, the certificate granted to this applicant and the interpretation subsequently placed upon it falls far short of being a model of clarity or definiteness. Nor is such certificate a workable one. Few of the active oil fields have been or are on the actual routes over which transportation was authorized. Tanks and heavy machinery are frequently destined to points off the main highways. In effect, the Commission granted a certificate to render a certain service deemed necessary and limited the routes so that they did not touch many of the places to which the service was to be rendered.

Under these circumstances, it seems appropriate here to grant to this applicant a new certificate in lieu of the certificate he now has but in which (a) the routes of the old certificate are so extended as to permit of service to adjacent oil fields and with certain lateral rights for the delivery of heavy machinery, steel, pipe and tanks; (b) the commodities which may be carried are definitely defined and limited; and (c) the weight limitation made definite and certain. Such new certificate should be so framed as to

cover in a definite and practical way the service which it was originally intended to certificate and nothing more. Applicant should be directed to file a tariff in the form of that attached to the application but modified to accord with the limited and defined certificate granted. With such a certificate and tariff applicant will have no possible excuse or justification for not observing territorial or commodity limitations or tariff rates; and the non-observance of any of these in the future will furnish ground for the revocation of such certificate. There should be attached to the certificate conditions which will tend to insure a full and exact observance.

Applicant's utter disregard of the law should not be allowed to pass unnoticed; and it is suggested that protestants take steps to institute prosecutions under the Auto Stage and Truck Transportation Act for violations here admitted by applicant and the evidence of which is in the instant record. The issuance of cease and desist orders by this Commission, followed by contempt proceedings, or revocations of certificate, are not the sole and exclusive relief available to certificated carriers where violations of law occur. With the substantially reduced appropriations under which this Commission is now operating there would seem to be no good reason why persons aware of and injured by violations of the Act should not look to the general civil and criminal courts and the remedies there available, instead of to this Commission in its present financially crippled condition.

I recommend the following form of order:

O R D E R

Public hearings having been had in the above entitled application and the matter being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FINDS AS A FACT AND DECLARES that public convenience and necessity require the operation by Asbury Truck Company, a corporation, of an automotive truck service on demand for the transportation of

- (a) Oil well supplies, heavy machinery, pipe, steel and tanks, as hereinafter specifically defined and limited,
- (b) In truck-load lots, with a minimum weight per load of not less than 4000 pounds, such weight limitation to apply as to the entire trip except in the case of the transportation of oil well supplies when the limitation need apply only at the initiation of the trip,
- (c) Each load to be limited to shipments from one consignor to one or more consignees, or to shipments from one or more consignors to one consignee,
- (d) Upon and along the following described routes, with the right to make lateral departures therefrom, as herein specifically stated and not otherwise, and subject to the conditions and limitations hereinafter stated:
 - 1. Between Salinas and Los Angeles and Los Angeles Harbor points, via the Coast Highway.
 - 2. Between Fresno and Los Angeles and Los Angeles Harbor points, via Bakersfield and the Ridge and/or Tehachapi routes.
 - 3. Between Los Angeles and Los Angeles Harbor points and San Bernardino, via the Foothill and Valley Boulevards.
 - 4. Between Owenyo and Los Angeles and Los Angeles Harbor points, via Mojave.
 - 5. Between Los Angeles and Los Angeles Harbor points and San Diego, via the Coast or Inland routes.
 - 6. Between Los Angeles, Los Angeles Harbor points and Imperial Valley points, via Coast or Inland routes to San Diego and via State Highway to Imperial Valley.
 - 7. Between Los Angeles, Los Angeles Harbor points and Santa Monica Bay points.

8. Between San Bernardino and Needles, via National Oil Trails Road.
9. Between San Bernardino and Imperial Valley points and California-Arizona State Line via Ocean-to-Ocean Highway.
10. Between Bakersfield and McKittrick, Fellows, Taft, and Maricopa.
11. Between Fresno and Coalinga and Alcalde.

The right to make lateral departures from the routes specified shall be as follows and not otherwise:

(a) For the service of the following designated oil fields adjacent to one or more of such routes:

In the so-called Los Angeles Basin:

Los Angeles	Seal Beach
Salt Lake	Huntington Beach
Beverly Hills	Newport
Inglewood	Montebello
Playa del Rey	Whittier
Potrero	Santa Fe Springs
Lawndale	Brea
Rosecrans	Olinda
Domínguez	East Coyote
Torrance	West Coyote
Long Beach	Richfield

In the so-called Coastal Fields:

Arroyo Grande	Santa Paula
Casmalia	South Mountain
Santa Maria	Conejo
Cat Canyon	Bardsdale
Los Alamos	Little Sespe Creek
Gato Ridge	Tar Creek
Lompoc	Shiells Canyon
Capitan	Eureka Canyon
Coleta	Torrey Canyon
Elwood	Modelo Canyon
Santa Barbara Mesa	Piru
Summerland	Tapo Canyon
Rincon	Simi
San Miguelito	Pico Canyon
Ventura Avenue	Wiley Canyon
Ojai	

In the so-called Midway Fields:

Mt. Poso	Buena Vista Hills
Round Mountain	Sunset
Kern Front	Midway
Kern River	North Midway
Fruitvale	McKittrick
Weed Patch	Templor
Wheeler Ridge	Belridge
Newhall	North Belridge
Elk Hills	Lost Hills

In the so-called Kettleman Hills Fields:

Coalinga	Devil's Den
Kettleman Hills	

(b) For the delivery of heavy machinery, pipe, steel and tanks not to exceed ten miles on either side of the specified routes.

The expression "oil well supplies" shall include:

- (a) Articles described under that designation in the current Western Classification C.R.C. No. 517 of F. W. Gomph, Agent, or re-issues thereof.
- (b) In addition, such commodities as may be incidental or necessary to the establishment or dismantling of an oil well, but only when such additional commodities are shipped by or consigned and delivered to the person, firm or corporation establishing, operating, or dismantling such well.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to Asbury Truck Company, a corporation, in accordance with the foregoing declaration and covering the above described routes, in lieu of the certificate granted said corporation by Decision No. 19067 of date December 1, 1927, and not otherwise, all subject to the following terms and conditions:

1. Applicant shall, within twenty (20) days of the effective date of this order file:

- (a) Its written acceptance of the certificate herein granted, whereupon and ipso facto the certificate issued by Decision No. 19067 shall stand and be cancelled and annulled.
- (b) A tariff in the general form of that attached to the application but modified to accord with the limited and defined certificate herein granted.
- (c) A map or maps designating the routes lateral to the designated main routes to be used in serving the several above mentioned oil fields.

2. Commencing on the 15th day of January, 1934, and each three (3) months thereafter, the applicant shall file with the Commission for its confidential information a detailed report verified by its President and Chief Accounting Officer, showing each shipment transported by it during the preceding quarter, with the name of the consignor and the consignee, the point of origin and of destination, the weight and the charges assessed and collected.

3. 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.

4. 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.

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 21st day of August, 1935.

CC Seavoy
Leon C. Whiteley
M. H. Lewis
M. B. Harris
Commissioners.