

Decision No. 28742

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
CLAYTON C. DICKINSON for certificate)
of public convenience and necessity)
to operate an auto-truck freight) Application No. 18912.
service for the transportation of)
property, as a common carrier, between)
Sacramento, California, and Colusa,)
California, and intermediate points.)

Thos. O'Hara and W. E. Hatfield for applicant.

L. N. Bradshaw for the Sacramento Northern
Railway, protestant.

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

L. I. McKim for The River Lines, protestant.

WARE, Commissioner:

O P I N I O N

This application was filed May 26, 1933, in compliance
with Decision No. 25907 in Case No. 3394, dated May 1, 1933.

Said application was heard in Colusa, January 10, 1934, at which
time and place all the evidence was adduced, and the matter being
submitted is now ready for decision.

In Case No. 3394 the complainant, Sacramento Northern
Railway, sought an order directing Clayton C. Dickinson, the
applicant herein, to cease and desist common carrier of freight
operations between Sacramento and Colusa and intermediate points.
Consolidated in said case, and incorporated in said Decision
No. 25907, was Case No. 3395 instituted by the same railway com-
plainant against another common carrier freight operator, W. W.
O'Dell.

In the instant proceeding, said Decision No. 25907 was

referred to as affording the foundation for this application. The following is quoted from said decision realizing that it points the way to the conclusions hereinafter reached:

"More than nine years ago the defendant Dickinson ventured into the business of peddling perishable fruits and vegetables which he customarily bought wholesale in Sacramento, and hauled in his truck, and sold to the merchants in Colusa and vicinity and intermediate points. This pursuit originally constituted his only activity and avocation. With the advent of the chain stores, said merchants induced him to enlarge the scope of his hauling by carrying to their doors frequent supplies of wholesale freight and produce originating in numerous wholesale houses in Sacramento. This duplex service appeared necessary to his patrons in the furtherance of their competition with said chain stores which received by truck frequent renewals of fresh stock and supplies. With succeeding years, the peddling aspect of Dickinson's business decreased in direct proportion as his freight service increased. Notwithstanding, he has steadfastly confined his business to such patrons who have continued, with more or less frequency, to buy from his truck the perishable supplies which he has continued in diminishing extent to peddle.

"As distinguished from the Dickinson case, the defendant W. W. O'Dell inaugurated his trucking of peddled perishables and ordered freight several years later. O'Dell has been concerned chiefly with the freight feature of his business from the commencement of his hauling; and the record discloses a number of merchants who have variously engaged the O'Dell freight service while they have never bought anything from his truck."

"Finally, the Dickinson business seems to have the greater expansion, and at the present time is the more favored and popular of the two services. Were it necessary that the community of Colusa should be permitted to perpetuate a motor truck freight service comparable to either, the Dickinson service would receive the more responsive support." * * *

"1. Numerous deliveries of coffee, pressed and smoked meats, batteries, tires, auto accessories, and service station supplies have been made by the defendant O'Dell to regular freight patrons who testified that they never had made a purchase of fruits, vegetables, merchandise or anything from him."

"In this behalf, it must be observed that this common and widespread practice by common carriers of taking orders from retail merchants, getting such orders filled and loaded upon their trucks at the wholesale houses, thereupon hauling said orders and charging for the transportation, constitutes an improved, modern and special variety of freight service and cannot be classified under any other camouflaged designation.

"Each of these defendants is a common carrier, and to the extent that each is engaged in the unlawful transportation of freight as above described, should be ordered to cease and desist."

The order affecting O'Dell was unconditional. The order affecting Dickinson invited the filing of the instant application and provided for a stay in its operation pending action of this Commission upon said application.

The facts as developed at this hearing warrant the granting, with certain qualifications and limitations, of the certificate of public convenience and necessity sought by the applicant Dickinson. They may be summarized briefly as follows:

Eight of the more active merchants of Colusa testified that they had patronized the Dickinson truck service for more than 10 years, and were dependent upon such method of transportation to adequately and satisfactorily supply their trade with necessary and suitable merchandise. They emphasized that public convenience and necessity require such a common carrier service for fruits, vegetables and groceries moving between Sacramento and Colusa. There is no sufficient showing regarding the other commodities which applicant proposes to carry between Sacramento and Colusa. With equal clarity these witnesses attacked the existing service of the Southern Pacific Company, Sacramento Northern and Pacific Motor Transport Company as being inadequate and unsatisfactory. They uniformly demand and insist upon having the overnight pick-up and delivery store-door service, which has

been so successfully conducted by Dickinson, and they clearly establish the fact that, should Dickinson disappear from this field of transportation they will utilize an identical service of their own or another's creation. These merchants require personal care, service, treatment and handling of their orders and deliveries of fruits, vegetables and groceries moving between Sacramento and Colusa. They describe the rail and Pacific Motor Transport Company's service as unsatisfactory and inadequate.

Four other merchants and business men, two each from Meridian and Sutter, proved that public convenience and necessity require the proposed service by the applicant Dickinson for fresh fruits, vegetables and groceries, and also for fresh meats, packing house and poultry products, moving between Sacramento and Meridian and Sutter. The other existing means of transportation they describe as unsatisfactory, slow and inadequate. Unless they can secure the Dickinson service they will employ identical means of handling their merchandise to meet their necessities. The record is not sufficient to warrant any service for other than these commodities.

At the hearing the applicant amended his request for a certificate deleting the proposed service as affecting Tudor, Nicolaus and Verona, and also amended his proposed service in the route to be traveled, said route, as amended, being between Colusa and Sacramento via Meridian, Sutter, Yuba City, Marysville, Lincoln, Roseville and North Sacramento.

Testimony offered by the Sacramento Northern Railway protesting the granting of the applicant's certificate shows, according to Exhibit 4, annual loss in the operation of the Colusa branch totaling \$1,597. The record discloses that the diminishing patronage of the existing rail carriers is largely due to truck operations of the wildcat or uncertificated variety,

and to private operators. It is likewise patent that applicant's service which this order will certificate not only meets public convenience and necessity but such service, or one identical to it, would be resorted to by the shipping public affected, in spite of the absence of applicant from the field of transportation. It therefore follows that the Sacramento Northern Railway would never recoup its annual loss of \$1,597. whether this Commission should grant or deny in whole or in part the proposed service.

I recommend that within the limitations hereinabove outlined, and for the commodities, a certificate of public convenience and necessity should issue to the applicant Clayton C. Dickinson.

The following form of order is recommended:

O R D E R

Clayton C. Dickinson having made application for a certificate of public convenience and necessity to operate auto truck freight service between Sacramento and Colusa and intermediate points, a public hearing having been held and the matter being now ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
HEREBY DECLARES that public convenience and necessity require the establishment of auto truck transportation between Sacramento and Colusa, serving as intermediate points Sutter and Meridian, for the transportation of fruits, vegetables and groceries only between Sacramento and Colusa, and fruits, vegetables, groceries, fresh meats and packing house and poultry products between Sacramento and Sutter and Meridian, and

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

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.

2. Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, 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 insofar as they conform to the certificate herein granted.

3. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, 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 applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS FURTHER ORDERED that in all other respects the application be denied.

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.

Dated at San Francisco, California, this 22nd day of January, 1934.

P. C. Seavey
Leon A. Whisell
W. B. Loring
W. H. Loring

Commissioners.