

Decision No. 27293

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of J. A. CRITSCH, doing business under the firm name and style of OREGON-CALIFORNIA FAST FREIGHT, for certificate of public convenience and necessity to operate an auto truck freight service between San Francisco and certain East Bay cities as points of origin and destination, and Red Bluff, Yreka and points intermediate thereto.

Application
No. 19044

ORIGINAL

Douglas Brookman, for Applicant.
H. W. Hobbs, for Southern Pacific Company and Pacific Motor Transport Company, Protestants.
Edward Stern, for Railway Express Agency, Protestant.
V. A. Gualano and H. W. Hobbs, for Yreka Railroad Company, Protestant.
H. C. Lucas and T. Finkbohner, for Pacific Greyhound Lines, Protestant.

WEITSELL, Commissioner -

OPINION

Applicant seeks a certificate of public convenience and necessity authorizing the operation of a freight service by auto truck between San Francisco and Oakland and other East Bay cities and points between Red Bluff and Yreka, inclusive, and all intermediate points on Highway No. 99, under rates and time schedules attached to the application.

Public hearings were conducted at San Francisco, Red Bluff, Redding, Dunsmuir and Yreka. Briefs having been filed on June 27, 1934, the matter is now ready for decision.

This is the second application by Critsch, who operates under the fictitious name of Oregon-California Fast Freight. His present business is limited to interstate operations, except for three contracts calling for intrastate carriage. The record presents no reason why he cannot efficiently perform the duties

sought as a public carrier. He possesses adequate equipment and his financial ability to enlarge his service is clear. For this reason discussion of minor or technical matters, which show some dispute in the record, will be avoided in the determination of the main question of public convenience and necessity.

Gritsch's previous application¹ was denied on two grounds (a) that he had established and conducted operations to the points involved without first procuring a certificate therefor and had persisted until the time of decision, and (b) that the service of the rail carriers then and now was "reasonably adequate." The then aspects of the matter prevented condonation, if such was possible. In the present proceeding applicant testified that he had pursued this course under legal advice but, on the same advice, had ceased intrastate service (except the three contracts alluded to), in November, 1932, and this continued until the present time. I believe the record shows this to be a fact, although protestants attempted to show a few breaches which appear to be more accidental than intentional. It appears that applicant has purged himself of disobedience to law or the orders of this Commission and is fit and able to carry on the common carrier service he proposes.

The "reasonably adequate" service of the rail carriers, the record shows, has been improved. Much was said in the record about these improvements, but it is significant to me that they were not established until five (5) months after applicant had filed his second application (August 11, 1933). Protestant asserts that these improvements had been in contemplation for some considerable time prior to their installation. In January, 1934, protestants Southern Pacific Company and Pacific Motor Transport Company established overnight service on passenger trains to

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Application No.17290, filed April 1, 1931, and determined by Decision No.25244, dated October 10, 1932.

Red Bluff, Redding, Dunsmuir and Montague and provided pickup and delivery at both points, and some intermediates. P. W. Barnard, testifying in behalf of these protestants, said this change cost the Southern Pacific Company \$38,767 per year additional in operating expenses. Similar type of service was established between Portland and Ashland, Oregon, in October, 1931, and now exists. This method permits overnight service between termini, a thing the patrons of the rail lines had not enjoyed before January, 1934. The establishment of this type of freight service (now also existing between San Francisco and Los Angeles), is urged as a barrier to the admission of any competing service. In addition, protestants show one hundred and thirty (130) rate reductions made between October 10, 1932, and May 25, 1934, (Exhibit Nos. 15 and 17), affecting the points involved herein. Of these reductions over forty (40) were made prior to the filing of the application herein, and certain reclassifications of commodities have further reduced rates. Such reductions, however, were incidental to a general system reduction and not specially for the points involved herein. Summing up, protestants, now (at the time of submission), provide overnight service at many reduced rates and with pickup and delivery at many places involved.

In addition, protestants have asked authority (and the request after hearing is now under submission), to establish truck service between Dunsmuir and Montague, auxiliary to train service, and thus bring overnight service to intermediate points, Dunsmuir and Montague having already received overnight service by the passenger train equipment added in January, 1934. The establishment of this train service enables Yreka Railroad Company to make early morning deliveries at Yreka and the record shows that witnesses are now satisfied with this service, although many testified that truck service, as proposed by applicant, also is needed.

During the extended hearings on this application the testimony of 128 witnesses was presented. Of these eighty seven (87) were oral witnesses - forty five (45) for applicant and forty two (42) for protestants. Testimony of fifteen (15) witnesses in behalf of applicant, and twenty six (26) in behalf of protestants was stipulated, being cumulative. Of the witnesses twenty three (23) testified for applicant in the previous hearings and six (6) for protestants. Eight, who formerly testified for applicant, were presented by protestants. Much of protestants' testimony was somewhat negative in character, being those witnesses who do not need and would not use truck service. But there is a clear indication in the testimony of the use of numerous unauthorized truck services by witnesses for both sides and these witnesses, in part, say that this is the result of there being no responsible, authorized truck carrier. The record in this proceeding clearly shows that a substantial portion of the shipping public desires an authorized truck carrier from Bay point cities to the northern points involved herein. I am sure that this applicant, had he quit operations when he filed his first application, would have acquired the privilege of a certificated carrier. That he made a mistake he now admits, but I believe the record in this proceeding clearly shows that since the date of Decision No. 25244 he has obeyed the discipline of regulation. From the time he was first brought before the Commission in 1931, protestants have done nothing until January, 1934, in the way of bettering service that required two days, or more, to make deliveries, and then only after applicant, knowing of this and of the operations of unauthorized carriers, had renewed his application for authority as an intrastate carrier. The service established in Oregon in 1931 by Southern Pacific Company - and transportation in Oregon is less rigidly regulated than in California - was not established further south on the same

system for three years. In addition, this protestant concedes need for truck service between Dunsmuir and Montague by its offer of such service to intermediate points.

Careful review of the record leads me to the conclusion that the service proposed by applicant should be authorized, except between Dunsmuir and Yreka, inclusive, for which area the truck service of Pacific Motor Transport Company (as proposed in Application No.19627, pending), may be ample, coupled with the similar service of Yreka Railroad from the rail line at Montague. Protestants expressed the fear that competition by this applicant would divert traffic from the rail lines and make continuation of the improved rail service doubtful. But they now suffer serious diversion to unauthorized carriers and this diversion is not new nor lessening. Patrons of transportation facilities now have no choice which I feel they should have under the record in this proceeding.

I propose the following form of Order:

ORDER

J. A. Gritsch has made application for a certificate of public necessity for the transportation of property between San Francisco, Oakland, Berkeley, Alameda, Emeryville and San Leandro, on one hand, and Red Bluff, Cottonwood, Anderson, Redding, Dunsmuir, Mt. Shasta, Weed, Edgewood, Gazelle, Granada and Yreka and all intermediate points, public hearings 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 auto truck service for the transportation of property between San Francisco, Oakland, Berkeley, Alameda, Emeryville and San Leandro, on one hand, and Red Bluff and Dunsmuir, including Red Bluff but excluding Dunsmuir, and all

intermediate points over and along the following route:

IT IS HEREBY FURTHER ORDERED that in all other respects
said ~~Via Carquinez Bridge, Highway No. 99-W, via Dixon~~
~~and Corning, and Highway No. 99, between terminals~~ this order
shall and all intermediate points, the date hereof.

The foregoing opinion and order are hereby approved and
IT IS HEREBY ORDERED that a certificate of public convenience
ordered filed as the opinion and order of the Railroad Commission
and necessity therefor be and the same hereby is granted to
of the State of California.
J. A. Critsch, provided, however, that no authority is granted
herein for transportation between ~~San Francisco, Oakland, Berkeley,~~
~~Alameda, Emeryville and San Leandro,~~ said points being only points
of origin or destination for shipments to and from points Red Bluff
to Dunsmuir, as restricted, and subject to the following conditions:

- W. J. Carr*
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 (5) 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.

I dissent:

This same applicant was denied a certificate by this Commission on October 10, 1932, Decision No. 25,244. The service of the protesting carriers in that case who are also the protesting carriers here, was held to be adequate. The record in this case does not show any change in conditions since that time except that the service of the protesting carriers has improved.

It has not been shown that the public will benefit either in rates or service by granting the certificate.

"Public convenience and necessity must be shown by direct testimony. It can not be assumed to exist because of the statement of one or several persons that if certain facilities are offered they will utilize them. In all cases the burden is on the applicant to show public necessity, and if there is a substantial conflict in the evidence it must be resolved against him. This is required in order that the Commission may ascertain clearly from the record that public necessity does actually exist." (Washington et al. vs. Fairchild, 224 U.S. 510.)

The applicant is not proposing the improvement of an existing service. He proposes to institute an entirely new service in a field already adequately filled, nor will the proposed new service lessen rates, expedite delivery or otherwise substantially benefit the public. To permit a new carrier to enter the field would lessen the ability of the existing carriers to maintain their present service.

The application should be denied.

Dated at San Francisco, California, this 27th day of August, 1934.


Commissioner

