

Decision No. 27389.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
JOHNSON TRUCK LINES for a certificate )  
of public convenience and necessity to ) Application No. 19108.  
operate an auto truck transportation )  
service as a common carrier. )

- W. P. Rich, Thomas M. Carlson and Thelen & Merrin, by Max Thelen, for applicant.  
H. W. Hobbs, for Southern Pacific Company and Pacific Motor Transport Company, protestants.  
Edward Stern, for Railway Express Agency, Inc., protestant.  
L. N. Bradshaw, for Sacramento Northern Railway, The Western Pacific Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, protestants.  
Scott Lawton, for Oroville Truck and Storage Company, protestant.  
F. P. Kinsinger, for Loose-Wiles Biscuit Company, interested party.  
E. F. Salisbury, for Merchants Express and Drayage Company, protestant.

WHITSELL, Commissioner:

O P I N I O N

Applicants, Walter J. Johnson and Rose A. Johnson, are co-partners who succeeded to the truck transportation business of P. F. Johnson & Son (established in 1909). In the present application they offer a common carrier truck service for the transportation of freight between San Francisco and East Bay cities (Richmond to San Leandro) on the one hand, and Yuba City, Marysville, Chico, Oroville and intermediate points on the other hand, via designated highways.

Public hearings were held at San Francisco, Oakland, Marysville and Chico.

Applicants' business is managed by Walter J. Johnson, who

has been continuously in the trucking business with his father for the past twenty-five years. The record discloses that applicants are financially able to establish and maintain the service they propose and that it will have efficient management. Applicants maintain terminal facilities and a garage at Richmond, and operate six trucks and five trailers. A portion of their service now rendered is performed under contracts with Standard Oil Company, Olive Producers Company of Oroville and the Wyandotte Olive Growers Association of Oroville. The Wyandotte Olive Growers Association is a cooperative association of fifty-six farmers engaged in the olive industry and shipping canned ripe olives to San Francisco and generally throughout the United States. P. F. Johnson & Son formerly conducted additional service between San Francisco and East Bay points and the northern territory sought in this application, but ceased such service in November 1933 after a complaint was filed alleging such operations to be unlawful (Case 3365).

During the hearings applicants presented twenty-six witnesses from Marysville, Gridley, Oroville, Chico and San Francisco Bay district. Protestants presented eighteen from Marysville, eight from Yuba City, eight from Live Oak, two from Gridley, three from Oroville, twenty from Chico, sixteen from San Francisco and twenty-two from Oakland and East Bay cities, a total of ninety-seven. Of this number the testimony of seventeen was entered by stipulation, being cumulative. The record made in these hearings, occupying eight entire days, presents fully the facts as to the operation proposed, existing operations, and the requirements for additional service.

The record, I believe, does not support the proposed service except between San Francisco and Richmond on the one hand and points north of Marysville to Chico and Oroville, including both Chico and Oroville on the other hand, and a southbound service for

the movement of agricultural and horticultural products.

Yuba City and Marysville now have service by the Southern Pacific Company, Western Pacific Railroad and Sacramento Northern Railway for carload and less carload traffic without pickup and delivery. It also has the express service of Pacific Motor Transport Company and Railway Express Agency, each of which maintains a satisfactory pickup and delivery service. Applicants' proposed service to those two points has not been justified.

As to the area north of Marysville, a different situation appears. The Southern Pacific Company serves all points directly and while its service to Marysville is satisfactory, its service beyond Marysville to and including Oroville and intermediate points, Live Oak, Gridley, Biggs, Richvale, Nelson, Durham and Chico is not entirely adequate. Oroville is also served by the Western Pacific Railroad. The Sacramento Northern Railway also serves both places, but only with second morning delivery. The Western Pacific does not serve Chico.

Railway Express Agency, Inc. maintains several services daily on the passenger trains of Southern Pacific, Western Pacific and Sacramento Northern to all the points affected. By this service morning shipments may be delivered in most of the points in the afternoon. More than one delivery daily is made at Marysville, Chico and Oroville by this carrier. It also maintains two return services, one leaving Chico at 3:10 P.M. and arriving at San Francisco at 9:30 P.M., another leaving Oroville at 4:38 P.M. and arriving at San Francisco at 10:35 P.M. Refrigerator service is provided for perishables, delivery being made to the wholesale markets between 2 and 5 A.M. the following morning. Although the rates are considerably higher than freight, the service of this carrier is patronized by many shippers and receivers, who testified it is satisfactory to them.

There appears, however, another deficiency in the service of

the rail lines. On southbound movements second day delivery only is accomplished. The testimony of shippers is that large volumes of grain, olives, beans and processed products of field and orchard are shipped now by truck because a more rapid delivery at San Francisco Bay points is required. Overnight service appears to be a necessity as these products, both perishable and otherwise, move upon sudden demand.

I believe authorizing applicant to establish southbound service for these commodities will enable shippers to patronize a regulated service and terminate the present practice of using unauthorized carriers, a change which their testimony reveals is desirable. This should include such service from Marysville, where one shipper patronizes trucks, to obtain overnight service only, to the extent of 4000 tons annually.

Applicants propose to operate one truck to Marysville and Yuba City, a second truck to the intermediate points and Chico, and a third, if necessary, to Oroville, by which method it will accomplish delivery at the opening of the business day rather than later in the morning or in the afternoon. Witnesses testified that this advantage was desired by them. In view of the fact that I feel no additional service is necessary at Yuba City and Marysville, it will be an easy matter for applicants to make the early morning deliveries scheduled for the points north of Marysville which it proposes to serve.

In this, as in many similar proceedings, there is a general expression on the part of witnesses in favor of a truck service as a flexible alternate for rail service. The desire of shippers for truck service is abundantly shown by many of the witnesses, indicating that where the rail service did not fit into their needs they find other methods of transportation. This area has never had the benefit of a certificated truck carrier either to San Francisco and the East Bay

region or to Sacramento. The bulk of the products of agriculture and horticulture has moved by truck from this area in large volume when emergency arrangements were necessary to deliver them at shipside for exportation. This is natural when rail service does not provide overnight delivery at San Francisco Bay points. I think there is sufficient in the record to justify the belief that applicants, if they are in possession of a certificate, will be able to attract to a stable regulated service most of the business that has moved by irresponsible itinerant truckmen. I am not inclined to think that this will divert any substantial tonnage from the existing carriers. Some of the back hauls have not been to either Richmond or San Francisco but to other Bay points. The record shows it would be of advantage were the area to have direct overnight truck service under regulation to San Francisco Bay points, and to this extent I think the showing of applicants is satisfactory.

The service from San Francisco and the Bay region would also, in my judgment, divert traffic from the unregulated trucks, as many shippers because of competitive conditions require early direct delivery to their customers. While the present rail freight service is as adequate as such a rigid service can be, applicants' service ought to, when established, attract a considerable portion of the shipments which are now moving by non-rail facilities.

The movement concerned involves a considerable amount of perishable or semi-perishable commodities, which require rapid transit to maintain their standards in the market.

Applicants' offer of service is not dependent upon depressing rates. The rates proposed by them are practically the same as the rail carriers. The evidence shows that there is no intention to depress the rates below the rail basis except on such commodities as might be moving in volume by so-called "wild-catters" and by commodity rates suited

to such movements. By preserving this rate standard, shippers now satisfied with the rail service (and at the hearings two score or more of them testified to their satisfaction) would have no inducement to transfer their business because of lower rates. The only attraction the Johnson service would provide for them would be a later pickup on carload quantities and on some less than carload, and an earlier delivery to Bay points.

During the hearings Rule 1 paragraph (c) of the rules and regulations was amended to read as follows:

"This carrier reserved the right to require at least twenty-four (24) hours' notice, in order to furnish equipment, in connection with carload shipments. The carrier reserves the right to refuse shipments if suitable equipment to handle the same is not available."

Protestants contend that such a rule operates as "carriers' convenience" and evades common carrier duty. It appears that twenty-four hours is a maximum period that is usual and not unreasonable. The final sentence, however, should be stricken from the rule as the carrier should be required to meet all demands for the service he offers. The rule should be amended, as suggested, as any truck carrier can obtain, by lease or otherwise, adequate equipment within twenty-four hours.

The application also was amended to alter Rule 1 paragraph (a), Local Express Tariff No. 1 to define and limit the pickup areas as follows:

Richmond - City Limits and also the territory within two (2) miles north of the northerly boundary of the city.

Oroville - City Limits and also the territory within one mile of the southerly boundary of the city.

Chico - City Limits and also the territory within one half mile in all directions from the boundary of the city.

These provisions appear to be the only ones enlarging the operations from highway service.

It is my conclusion from full consideration of the entire record that applicants have affirmatively shown the need of establishing the service proposed between San Francisco and Richmond and the area north of Marysville, including all intermediates to and including Oroville and Chico (but nothing between Richmond and Yuba City-Marysville), and I so find as a fact.

They also have shown the need of overnight service to San Francisco Bay points for the transportation of agricultural and horticultural products, a service not now rendered by any authorized carrier, and I so find as a fact.

Applicant Johnson Truck Lines is 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.

I propose the following form of order:

#### O R D E R

Walter J. Johnson and Rose A. Johnson, co-partners, operating under the fictitious name Johnson Truck Lines, having made application as above entitled, public hearings having been held and the matter being duly under submission,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation of an automotive truck service for the transportation of freight (a) between San Francisco and Richmond on the one hand and Live Oak, Gridley, East Gridley, Biggs, East Biggs, Oroville,

Richvale, Nelson, Durham and Chico, and all points intermediate to Live Oak and Oroville and Chico on the other hand; (b) from Chico, Durham, Nelson, Richvale, Oroville, East Biggs, Biggs, East Gridley, Gridley, Live Oak and Marysville-Yuba City for the transportation, southbound only, of grain, olives, beans and products of field and orchard, whether in their natural state or processed, to San Francisco, Oakland, Emeryville, Berkeley, Richmond, Alameda and San Leandro, over and along the following route:

From San Francisco, via Southern Pacific Golden Gate Ferries to Richmond piers; thence via State Highway via Pinole to Carquinez Bridge; thence via State Highway, via Vacaville, Dixon, Woodland, Knights Landing and Oswald to Yuba City and Marysville; thence via State Highway, via Live Oak, Gridley and Biggs to Oroville, serving East Gridley and East Biggs by diversion; thence via State Highway through Richvale, Nelson and Durham to Chico, and returning by identically the same route, reversed;

provided that no service of any kind shall be rendered to or from points between Richmond and Yuba City-Marysville, and provided further that southbound cargoes herein authorized may be routed by State Highway between Richmond and San Leandro, and the intermediate points of Berkeley, Emeryville, Oakland, Alameda and San Leandro; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and it is hereby granted to Walter J. Johnson and Rose A. Johnson, operating under the fictitious name Johnson Truck Lines, therefor, 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 after the effective date of this order, on not less than ten (10) 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. Applicants 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 it under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that otherwise than as herein specifically granted, the application is denied.

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 17<sup>th</sup> day of September, 1934.

Jean O'Connell

M. J. Ann

M. B. Harris

Arthur J. [Signature]  
Commissioners.