

Decision No. 27716

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ERNEST DEL CIELO, G. ROSSI, P. BRUNETTO and E. TOBACCO, individually and as co-partners under the fictitious firm name and style of PESCADERO FARMS ASSOCIATION DRAYAGE, a copartnership, for a certificate of public convenience and necessity to operate freight service as a common carrier between Coastway Ranch (Ano Nuevo Point) and Pomponio Creek and intermediate points, including Franklin Point, Pigeon Point, Bolsa Point, Lake Lucerne, Pebble Beach, Sand Beach and Pescadero, over and along the Coast Highway and seven miles laterally eastwardly therefrom and laterally to the Pacific Ocean shoreline westwardly therefrom, and between said aforementioned points and area and the following named points via the following described routes:

(1) Via the Coast Highway and San Mateo Road, via Halfmoon Bay to San Mateo;

(2) Via the Coast Highway and San Mateo Road, via Halfmoon Bay, via San Mateo and El Camino Real (U.S. 101W), via Colma and/or Bayshore Highway to San Francisco.

(3) Via the Coast Highway and San Mateo Road via Halfmoon Bay, via San Mateo and San Francisco Bay Toll Bridge to Hayward, excluding the handling of any local traffic via San Mateo and the San Mateo Bridge between San Francisco and Hayward, and/or between intermediate points and San Francisco or Hayward, or any local traffic from end to any intermediate points between San Francisco and Hayward on said route.

(4) Via Coast Highway and intermediate points, including Swanton, to Davenport, said freight service to Davenport to be limited to the transportation of fresh fruit, fresh vegetables and empty (used) second-hand crates or other containers returning to the point of shipment and not intended for sale or speculation.

BY THE COMMISSION -

O P I N I O N

This application came on for hearings before Examiner Johnson in San Mateo county and San Francisco. The matter was finally submitted on briefs as of April 14, 1934. The application, as amended, asks for a franchise to operate freight

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service as a common carrier between Coastway Ranch (also Nuevo Point) and Pomponio Creek and intermediate points, including Franklin Point, Pigeon Point, Bolsa Point, Lake Lucerne, Pebble Beach, Sand Beach and Pescadero, over and along the Coast Highway and seven miles laterally eastwardly therefrom and laterally to the Pacific Ocean shore line westerly therefrom and between said aforementioned points and area over the routes set forth in the title.

The application was amended to restrict movements between San Francisco and Hayward, via San Mateo, but as applicant presented no evidence as to any movement to Hayward, this portion of the application may be denied. A further amendment, by which the protest of Half Moon Bay Drayage Company, a certificated operator, was withdrawn, was to limit service to Pomponio Creek, a point south of Half Moon Bay.

The application was protested by Coastside Transportation Company, having a franchise from the Railroad Commission for the same territory.

The Coastside Transportation Company for many years has been rendering a service for both passengers and freight to the same territory covered by this application but a large number of farmers refuse to patronize the service offered by this public carrier. These farmers and property owners form a rather large minority of the shippers of agricultural products. They have at various times patronized unlicensed carriers, including applicants herein. At other times the farmers have furnished their own transportation and it is a growth from this service furnished for themselves that has been the foundation for this application.

The Pescadero Farms Association Drayage is a copartnership composed of four ranchers who have been hauling to and from San Francisco to the San Mateo Coast Highway to serve their own

convenience and their own ranches. By reason of various requests emanating from other ranchers, their neighbors and friends, they have greatly extended this service and have hauled freight for these neighbors and friends until now about 40 percent of their business arises from carrying other people's goods. This service has been in existence for a period of fifteen to eighteen months, seemingly to the satisfaction of its patrons. They assert they would not patronize the service of the protectant Coastside Transportation Company in any event. The testimony shows that they have some feeling against Coastside Transportation Company for alleged lack of attention, courtesy, speedy delivery, adjustment of claims for damages, and remedying of losses caused by delays. There appears some basis for complaints.

It seems proper that under the conditions existing in this territory that these shippers should have means of transporting their crops, in a legal manner, directly to the San Francisco market. The application will, therefore, be granted as applied for (except as to Hayward), with the stipulated restrictions included.

Ernest Del Cielo, G. Rossi, P. Brunetto and E. Tobacco 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.

ORDER

Ernest Del Cielo, G. Rossi, P. Brunetto and E. Tobacco, co-partners under the fictitious firm name of Pescadero Farms Association Drayage, have made application for a certificate of public convenience and necessity to conduct common carrier auto-

motive service for the transportation of property between Ano Nuevo Point and Pomponio Creek and intermediate points and seven miles on the east side of Coast Highway and/or to the Pacific Ocean on the west, and San Mateo, Colma and San Francisco, public hearings having been held and 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 and operation of said service, for the transportation of freight between all the points set forth in the application, except Hayward, or any point east of San Mateo or north of San Mateo, except Colma and/or San Francisco; or any point between San Mateo and Pomponio Creek, over and along the following routes:

1. Via the Coast Highway and San Mateo Road via Halfmoon Bay to San Mateo.
2. Via the Coast Highway and San Mateo Road via Halfmoon Bay via San Mateo and El Camino Real (U.S. 101W) via Colma and/or Bayshore Highway to San Francisco.
3. Via Coast Highway and intermediate points, including Swanton, to Davenport, said freight service to Davenport to be limited to the transportation of fresh fruit, fresh vegetables and empty (used) second-hand crates or other containers returning to the point of shipment and not intended for sale or speculation.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted to Ernest Del Cielo, G. Rossi, P. Brunetto and E. Tobacco, co-partners, operating under the fictitious name of Pescadero Farms Association Drayage, 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 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, or rates satisfactory to the Railroad Commission.

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 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 applicants herein unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

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

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 4th day of February, 1935.

Leon W. ...

M. J. ...

M. B. ...

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COMMISSIONERS.