

Decision No. 27991.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of HENRY B. ELBERT for certificate of public convenience and necessity to operate an automobile stage line, as a common carrier, between Arvin and Mojave and intermediate points; for an alternate route between Lamont and Arvin via DiGiorgio Farm and to consolidate his operation into one complete system under a certificate of public convenience and necessity in lieu of existing certificate.

ORIGINAL

Application No. 18161.

Gwyn E. Baker, for Applicant.
Edward Stern, for Railway Express Agency, Inc., Interested Party.
Henry W. Hobbs, for Southern Pacific Company and Pacific Motor Trucking Company, Protestants.
Rex Boston, for Asbury Truck Company, Protestant.
Robert Brennan, Wm. Brooks and E. K. Lockwood, for The Atchison, Topeka and Santa Fe Railway Company, Protestant.
Wallace K. Downey, for Motor Freight Terminal Company, Protestant.

BY THE COMMISSION:

SUPPLEMENTAL OPINION AND ORDER

Henry B. Elbert, doing business as The Arvin Line, has petitioned the Commission for a certificate of public convenience and necessity authorizing the enlargement of his present operative right so as to remove the restriction requiring that no single package weighing in excess of one hundred (100) pounds be transported between Bakersfield and Arvin and intermediate points.

Public hearings on said application were conducted by Examiner Gorman at Los Angeles, Bakersfield and Weed Patch on

February 14th and March 27th, 28th and 29th, 1935, the matter having been duly submitted on the latter date.

By Decision No. 23742, dated June 1st, 1931, on Application No. 17368, Henry B. Elbert acquired a certificate of public convenience and necessity to operate an automobile stage line for the transportation of passengers, baggage and express between Bakersfield and Arvin and intermediate points.

Decision No. 25809, dated April 10th, 1933, on Application No. 18161, granted to Henry B. Elbert a certificate of public convenience and necessity to extend the above mentioned service to Mojave. Although the Order in this decision does not provide any restriction as to the maximum weight of any individual package transported, the Opinion shows that applicant proposed to transport no express package weighing in excess of one hundred pounds, except fresh meats and laundry.

Applicant now seeks an enlargement of the certificate heretofore granted, by the removal of any weight restriction on a single package and permission to use a truck, carrying no passengers, as a separate vehicle on which to transport property when occasion requires; however, he does not seek the removal of these restrictions or permission to operate the truck except between Bakersfield and Arvin and intermediate points.

At the hearing in this matter applicant amended his application as follows:

"That applicant now seeks an enlargement of the certificate heretofore granted, by the removal of any weight limit on a single package, except articles listed in current Western Classification under the heading of Oil Well Supplies, and except heavy machinery, tanks, pipe and steel, any single package of which weighs over 500 pounds or is in excess of 25 feet in length; and permission to use a truck carrying no passengers, as a separate vehicle on which to transport property when occasion requires; but that applicant does not seek removal of these restrictions or permission to operate the truck except between Bakersfield, Arvin and intermediate points."

As a result of this amendment, Railway Express Agency, Inc., Asbury Truck Company and Motor Freight Terminal Company withdrew their protest to the granting of this application.

The service now being rendered by The Arvin Line is as follows:

<u>P.M.</u>	<u>A.M.</u>	<u>P.M.</u>			<u>A.M.</u>	<u>A.M.</u>	<u>P.M.</u>	
7:30	12:30	4:05	Ar.	Bakersfield	Lv.	7:10	9:25	4:45
6:00	11:30	3:30	Ar.	Arvin	Ar.	7:55	10:30	5:30
-	-	1:30	Lv.	Mojave	Ar.	10:30	-	-

Applicant proposes to operate the truck when necessary over the present route and on the schedule as shown above. The rates proposed to be charged for the transportation of property are those set forth in applicant's express tariff (Local Express Tariff - C.R.C. No. 2).

Applicant proposes to operate, in the proposed service, the same type of combination passenger and express vehicles which are now being used and, in addition, will use a light truck which will be acquired if the application is granted.

Applicant alleges that there has been a gradual but noticeable increase in the population in the territory sought to be served, with a consequent increase in the volume of tonnage to be moved; that there has been a recent development in the oil drilling and an increased number of producing oil wells in the territory immediately adjacent to Arvin; that the larger proportion of the property offered to applicant for transportation is in packages weighing less than one hundred pounds, however, there is a demand for the same kind of transportation for packages weighing in excess of one hundred pounds; that it is extremely inconvenient to both the shipper and the applicant to be required to segregate out only the smaller packages and not be permitted to ship those in excess of one hundred pounds; and that the service of Pacific Motor Trucking Company is furnished only to the railway depots and it does

not furnish pick-up and delivery at any point except Bakersfield, nor does it serve several points now being served by applicant.

Pacific Motor Trucking Company renders a daily truck service (one schedule daily), for both Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company between Bakersfield and Arvin, in lieu of rail service. Pacific Motor Trucking Company does not provide pick-up and delivery service on said route, other than at Bakersfield; however, it has an application (No. 19062), filed with the Commission, seeking permission to render pick-up and delivery service at the various points on said route.

Many witnesses representing building material firms, liquor dealers, wholesale tobacco and candies, wholesale produce, auto parts, general merchandise, etc., testified that frequently they have shipments, destined to points between Bakersfield and Arvin, which weigh in excess of one hundred pounds; that the breaking of merchandise into packages weighing less than one hundred pounds is inconvenient and causes an unnecessary expense; and that the three schedules daily of applicant provide an efficient and adequate service and this frequent service is not only convenient but often necessary in connection with their shipments.

The record also shows that a number of shipments are made to service stations and garages located along the highway, which at present have no other means of service than that of applicant.

Mr. Henry B. Elbert, applicant, testified that he had daily requests to transport packages weighing in excess of one hundred pounds and that in a few emergency cases he had transported packages weighing in excess of one hundred pounds which, in his opinion, he felt was justified in order to serve the public and to prevent the loss of future business from those particular shippers.

From a careful review of the record, it appears that Mr. Elbert was not fully aware of nor did he realize the seriousness of performing service in excess of his certificated authority. It appears that applicant acted in good faith and did not wilfully attempt to evade the law. It may be well at this time to place Mr. Elbert on notice that this Commission will not condone operations not in accord with his operative rights and that any future violation of his operative rights or tariffs will be drastically dealt with.

After carefully reviewing all of the evidence in this proceeding, it appears that public convenience and necessity will be subserved by the elimination of the weight restriction on shipments moving between Bakersfield and Arvin and intermediate points.

O R D E R

The above entitled application having been filed, public hearings having been held and the Commission being fully advised of the facts; therefore,

The Railroad Commission of the State of California Hereby Declares that public convenience and necessity require the removal from the certificate of public convenience and necessity, granted to Henry B. Elbert by Decisions Nos. 23742 and 25809, of the restrictions in so far as it relates to the transportation of single packages weighing over one hundred pounds between Bakersfield and Arvin and intermediate points.

IT IS HEREBY ORDERED that the certificate of public convenience and necessity granted by this Commission's Decisions Nos. 23742 and 25809 to Henry B. Elbert, operating under the fictitious name and style of The Arvin Line, shall be amended to authorize the transportation of freight, without restriction as to weight, between Bakersfield and Arvin and intermediate points only on equipment used in conjunction with passenger operations or on

equipment operated entirely independent of said passenger operations, subject, however, to the following conditions:

- (1) Applicant shall not transport any single package weighing in excess of 100 pounds between Bakersfield and Mojave and intermediate points, except that said restriction shall not apply locally between Bakersfield and Arvin and intermediate points.
- (2) Applicant shall not transport between Bakersfield and Arvin and intermediate points any articles listed in current Western Classification under the heading of "Oil Well Supplies," heavy machinery, tanks, pipes and steel, any single package of which weighs over 500 pounds or is in excess of 25 feet in length.
- (3) Applicant shall file his written acceptance of the amended certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
- (4) 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 referred to in the application, in so far as they conform to the certificate herein granted, or rates satisfactory to the Railroad Commission.
- (5) 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.

In all other respects, this Commission's Decisions Nos. 23742 and 25809 shall remain in full force and effect.

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 27th day of May, 1935.

Leon Whitely
W. A. C.
W. B. Harris
W. H. ...
Frank ...

Commissioners.