

ORIGINAL

Decision No. 2802R

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of W. A. CHAPMAN for a certificate of public convenience and necessity to operate a motor truck service as a common carrier between San Francisco, on the one hand, and the following points in Lake County, on the other hand, to-wit: Lakeport, Upper Lake, Lucerne, Finley, and Kelseyville.

} Application No. 19659.

H. A. Encell for applicant.

H. W. Hobbs for Northwestern Pacific Railroad Company, Southern Pacific Company, Pacific Motor Transport Company, Clear Lake Motor Drayage and Guido de Ghetaldi, protestants.

J. A. Keithly and H. W. Hobbs for the J. A. Keithly Truck Line, protestant.

WARE, COMMISSIONER:

O P I N I O N

Applicant herein seeks a certificate of public convenience and necessity to operate a motor truck service as a common carrier of certain commodities limited as to bulk and weight, between San Francisco, on the one hand, and the following points in Lake County, on the other hand, to-wit: Lakeport, Upper Lake, Lucerne, Finley and Kelseyville. The proposed service contemplates three weekly services, on Mondays, Wednesdays and Fridays, each leaving the Lake County points in the early morning and returning from San Francisco on the following morning. The proposed route is via the Lakeport-Hopland grade and Redwood Highway to Sausalito. Applicant proposes a pick-up and delivery service at all termini and his equipment consists of one 1½-ton Graham truck and one half-ton Ford truck.

The hearing of the application required three days in Lakeport, one day in Calistoga and one day in San Francisco. Briefs having been filed in behalf of applicant and protestants, the matter

is now ready for decision.

Active and serious protests were made by the following certificated common carriers, to-wit: Northwestern Pacific Railroad Company, Southern Pacific Company, Pacific Motor Transport Company, Guido de Ghetaldi, sole owner and operator of Clear Lake Motor Drayage, and J. A. Keithly, sole owner and operator of the J. A. Keithly Truck Line.

Amplifying the position of the foregoing protestants, it is timely to observe their present operations. Daily service between San Francisco and Lake County is available via Northwestern Pacific Railroad Company to Hopland and to Ukiah. At Hopland the truck service of J. A. Keithly affords through routes and joint rates to Lakeport, Kelseyville and Finley. At Ukiah the service of Guido de Ghetaldi affords through routes and joint rates to Upper Lake, Lucerne and intermediate points. Pacific Motor Transport Company operates over all of the foregoing protesting services, has a fleet of over 60 pick-up trucks in San Francisco, and affords through billing and store-door delivery into all of the Lake County termini involved herein. All of these services are daily except Sundays and holidays. Moreover, these services are available as late as 5:45 p.m. for San Francisco pick-ups with ensuing store-door deliveries into Lake County points at various hours on the following morning. These existing certificated services are practically as fast as the proposed services, and they are double the proposed service in frequency. Both the Keithly and Ghetaldi operations have served the Lake County territory for more than seven years continuously last past.

The major point urged by applicant in justification of the granting of the certificate he seeks is the fact that he proposes rates somewhat lower than those of the existing certificated carriers now operating in the field. There is no evidence herein to indicate

that the rates of the protesting carriers are unreasonable. Nor is the record convincing that applicant's proposed lower rates would prove either compensatory or permanent.

In an effort to show inadequacy of existing service and the establishment of public convenience and necessity for the proposed service, the applicant called 15 Lake County merchants and shipper witnesses. Seven of these witnesses admitted patronizing the existing certificated services with a reasonable degree of satisfaction. All of these witnesses were among the 33 shippers who, according to applicant's claims, have contracted in writing as of January 2, 1935, to give exclusively unto applicant, in his allegedly contract-carrier capacity, all of their San Francisco-Lake County freight.

These seven witnesses admitted having signed such contracts. In some instances they claimed to have signed the same without reading them; in other instances they claimed that there was no understanding or agreement upon their part "to turn over to the party of the second part" (the applicant) "for delivery in accordance with this agreement all shipments of said commodities originating in or at either or any of the places designated";<sup>(1)</sup> and in all instances they exercised a free hand in the selection of their carrier for all of their freight movements.

Applicant offered a chronological list (Exhibit 3) of 33 instances where he "turned down" shipments since January 1, 1935. His explanation for such refusals was that he "had no contract with one or the other of the parties involved." The applicant was then asked:

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1. Excerpt from Exhibit 2 offered by applicant: which is one of his 33 existing contracts prepared by his attorney for the express purpose of enabling the applicant to pursue his freight carrying operations as a "contract carrier."

Q. "You would have been willing to contract with any or all of the others:<sup>(2)</sup> is that correct?"

A. "I have had contracts with about half of them, old contracts."

Q. "Is my statement correct?"

A. "Yes, sir, I would have contracted with them."

Q. "But they would not contract with you?"

A. "They would not contract with me."

It seems appropriate to refer at this time to C.R.C. Decision No. 27272 in C.R.C. Case No. 3651 wherein Regulated Carriers, Inc., was complainant against the above named applicant, et al. The said W. A. Chapman, et al, were charged in this case "with unlawful common carrier operations by auto truck between San Francisco, Oakland, Alameda, Berkeley, Emeryville, Richmond and Albany, on the one hand, and Lakeport, Upper Lake, Lucerne, Lower Lake, Kelseyville and Ukiah, on the other hand."

In Decision No. 27272 this Commission ordered and found:

"that W. A. Chapman is operating as a transportation company as defined in Section 1, Subdivision (c) of the Auto Truck Transportation Act, Chap. 213, as amended, with common carrier status between San Francisco, on the one hand, and Lakeport, Upper Lake, Lucerne, Lower Lake, Kelseyville, Finley, Nice and Witter Springs, on the other hand, without a certificate of public convenience and necessity or prior right authorizing such operations.

"Based upon the finding and the opinion,

"IT IS HEREBY ORDERED that W. A. Chapman, said defendant, shall cease and desist, directly or indirectly or by any subterfuge or device from continuing such operations."

Inasmuch as no contempt proceeding has been instituted before this Commission against the applicant for alleged disobedience of the foregoing order, it is unnecessary to comment upon the presence or absence of contempt in the operation of freight movements by this applicant continuously since January 2, 1935, between the termini

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2. Referring to the 33 instances of rejected shipments.

involved herein. However, it is necessary for this Commission to conclude that the alleged contracts which applicant contends establish him as a contract-carrier are subterfuge and ingenuine in character. It is likewise necessary and appropriate to observe that the applicant Chapman has engaged in the carriage of freight between San Francisco and the Lake County points involved for approximately seven years last past, that he has already been ordered off the highways by an injunction of this Commission, and that he comes back to this Commission with the instant application tainted with unlawful operations and practices.

Counsel for applicant in his closing brief has said:

"If after an examination of the law as applied to the facts herein the Commission disagrees with applicant's attorney on the point, (3) such a statement in the opinion will be sufficient notice to applicant to discontinue the present method of conducting his business without taking the time or trouble of commencing proceedings for a technical contempt."

This Commission is not in agreement "with applicant's attorney on the point."

If further proof were needed in justification of a denial by this Commission of the certificate sought herein, the record discloses fourteen Lake County merchants and shipper-witnesses produced by the protestants, all of whom testified that the existing certificated services were satisfactory and adequate and that the proposed services were both unnecessary and undesirable.

Guido de Ghetaldi, one of the protesting carriers involved, testified that his equipment consists of 10 trucks and 3 trailers; that at no time has he been unable to handle all business tendered to him; that his carrying capacity has never been exercised beyond 75 per cent of its limitations; that because of diminishing patronage

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3. The point being argued was: Did these contracts establish applicant as a contract-carrier.

his operations are being conducted without profit; that any further diversions of his patronage and losses will necessitate his abandonment of service; and that such abandonment will deprive numerous shippers in the vicinity of Blue Lakes, Bachelors' Valley, Witter's and other springs of any freight transportation whatsoever.

J. A. Keithly, another of the protesting carriers involved, testified that his equipment is extended "not much over one-third" of its capacity; that the granting to Chapman of the certificate sought herein would divert additional business from him; and that in view of the fact that he operated during the last year at a loss of \$600.00, any such diversion would result in the termination of his services.

Lake County is a mountainous, sparsely populated region and possesses very limited productive areas. No railroad has ever penetrated its boundaries. It is likely that the transportation requirements of Lake County will be best subserved by adequate and convenient highways for many years to come. In view of her comparative isolation, she is entitled to the kind of common carriage that her citizenry demands. The instant record falls far short of the kind of showing which Lake County should make before any application similar to the one herein presented should be granted.

I recommend that the application be denied and propose the following order:

#### ORDER

W. A. Chapman having made application to the Railroad Commission for a certificate of public convenience and necessity to operate motor truck service as a common carrier between San Francisco, on the one hand, and Lakeport and other points in Lake County, on the other hand, a public hearing having been held and the matter having been duly submitted on briefs which have been filed,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY  
DECLARES that public convenience and necessary do not require the  
establishment or operation of the transportation service proposed  
by applicant; and

IT IS HEREBY ORDERED that the application be and the same  
hereby is denied.

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 10th day of  
June, 1935.

Tom A. White

M. J. Con

M. B. Davis

W. L. ...

Frank R. ...

Commissioners.