

Decision No. 28163

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 and 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 points of shipment and not intended for sale or speculation.

Olds & Olds, for applicant.  
R. L. Vaughan & Scott Elder, for protestants.

BY THE COMMISSION:

REPORT OF THE COMMISSION ON THE ORAL  
ARGUMENT ON PETITION FOR REHEARING.

ORIGINAL

Application No. 19195.

At the request of protestant Coastwise Transport Company, this proceeding was set for oral argument on the present record to determine the merits of a Petition for Rehearing submitted by it, in which we were requested to reverse or modify the conclusion reached in our Decision No. 27716 dated February 4, 1935.

On April 24, 1935, oral arguments were heard and the record, including the briefs filed after oral argument, the last received June 20, 1935, is now before us for further action.

A certificate of public convenience and necessity was granted by the above numbered decision to the Pescadero Farms Association Drayage (fictitious name for the partnership) to operate freight services as a common carrier of fresh fruit, fresh vegetables and empty secondhand crates originated or destined to points between Ano Noevo Point and Pomponio Creek and intermediate points on the one hand, and San Francisco; also to Davenport on the south. The several grounds relied upon by the Coastwise Transport Company in support of its petition for an annulment of the operating certificate are briefly as follows: (1) That there was no finding that protestant's service was inadequate; (2) That no weight was given to protestant's rebuttal testimony; (3) That no consideration was given to the differences in rates charged; (4) That no consideration was given to the fact that applicant had been operating in violation of the law; (5) That the Opinion and Order reversed other decisions of the Commission; and (6) That the Opinion and Order violated the Constitution of the United States and the State of California.

The record is overburdened with testimony and exhibits. There were a total of 8 days of hearings at San Francisco and Pescadero; testimony from some 57 witnesses representing shippers, consignees and protestants; a total of 482 pages of transcript; and 92 pages of briefs, and in addition an oral argument and discussion.

It is impracticable to restate here all that was urged

in the oral argument and the briefs in opposition to or in support of our conclusions but it is clear from an examination of this entire record and that made in the co-related proceeding, Case No. 5670, Decision No. 27725 of February 4, 1935, (Regulated Carriers vs. E. Tobacco, et al., doing business under the name of the Pescadero Farmers Grain Association) to which this protestant referred in its rehearing petition, that every point advanced by this protestant was given full consideration. There were conflicts in the testimony of witnesses but there is controlling proof that the trucking services rendered by protestant have not been satisfactory to the farmers in the territory involved for the several years just past; also that about 61 per cent of the tonnage hauled by this applicant was fresh produce grown and owned by them and which, in any event, could not be secured by protestant even if no certificate of public convenience and necessity were authorized to applicant in the instant proceeding.

Applicant filed its acceptance of the certificate on February 19, 1935, and is now rendering a common carrier service between points authorized by Decision No. 27716. Our decision is directly responsive to the duties of the Commission as set forth in the Auto Truck Transportation Act, Section 5:

"The railroad commission shall have power, with or without hearing to issue said certificate as prayed for, or to refuse to issue the same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as, in its judgment, the public convenience and necessity may require;"

The order was made after careful consideration based upon this voluminous record and in the absence of a showing of error, we are of the opinion that the original order should be sustained and this petition for rehearing dismissed.

O R D E R

Upon consideration of the petition for rehearing in this application by the protestant asking for a further hearing and the oral argument having been had and the Commission having reviewed the record,

IT IS HEREBY ORDERED that the said petition be and it is hereby denied and dismissed.

IT IS HEREBY FURTHER ORDERED that Decision No. 27716 of February 4, 1955 made herein shall remain in full force and effect.

Dated at San Francisco, California, this 12<sup>th</sup> day of August, 1955.

Leonard J. Sullivan  
W. A. Cunniff  
W. B. Kinnis  
William J. Kinnis  
Walter R. Kinnis  
Commissioners.