

Decision No. 28443

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
GEO. DOSTER - Stockton-Oakdale Ex-
press Co. for certificate of public
convenience and necessity to operate
Truck Line Freight, as an extension
to present franchise now held, as
a common carrier between Stockton,
Waterford, via Sims Station, Riverbank
and Empire and return.

Application No. 20180.

ORIGINAL

Louttit, Marceau and Louttit by D.V. Marceau for Applicant;
H. W. Hobbs for Southern Pacific Company and Pacific Motor
Transport Company, protestants;
Robert Brennan and W. F. Brooks for The Atchison, Topeka &
Santa Fe Railway Company, protestant;
Edward Stern for Railway Express Agency, Inc., protestant.

BY THE COMMISSION:

O P I N I O N

Applicant now operates, under proper certificate, a common carrier truck freight service between Stockton and Oakdale, via Colledgeville, Escalon and Valley Home. He now seeks certificated authority to extend this service to Simms Station, Riverbank, Waterford and Empire.

During the progress of a hearing conducted by Examiner Williams at Stockton, applicant withdrew his request as to Waterford and Empire, to which points he offered service twice a week, while Southern Pacific and Pacific Motor Transport Company give daily service to Waterford and The Atchison, Topeka and Santa Fe Railway gives daily service to Empire.

The application was submitted on his showing of a proposed daily service to Riverbank, which is now served daily by The Atchison, Topeka and Santa Fe Railway Company, and service

to Simms Station, now served by Tidewater Southern Electric Railway Company, the latter of which entered no protest.

Much of the testimony presented concerned the points withdrawn by applicant. In general three shippers supported applicant because he had, since August, furnished regular service to them to all points. On October 15, 1935, applicant filed his application for a permit as a radial highway common carrier from Stockton and named only the four points included in the instant application, which was filed October 14, 1935.

Review of the testimony in the record does not justify granting of the certificate sought, except to Simms Station, involving about two tons weekly. The daily service of The Atchison, Topeka and Santa Fe Railway to Riverbank is as expeditious as that proposed by applicant, except for later pick-up at Stockton. Accordingly, certificate will be granted authorizing service only to Simms Station.

Lest applicant be deceived as to his transportation privileges, the granting of this certificate should not be understood to sanction continuance of the regular daily or bi-weekly service he has been rendering to Riverbank, Empire and Waterford, under a radial highway common carrier permit. According to applicant's testimony he has been transporting since August all commodities tendered him by nine large shippers in Stockton to the three points herein denied, on regular schedule and route. Such an operation is not authorized under a radial permit and should be discontinued by him.

George Doster 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.

O R D E R

George Doster, having made application for a certificate extending his operation as a common carrier of property, as fixed by Decision No. 28,143, dated August 31, 1935, on Application No. 20,070, to Simms Station, Riverbank, Empire and Waterford, a public hearing having been held and the matter having been duly submitted for decision;

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by George Doster of an automotive truck service as a highway common carrier for the transportation of property for compensation between Stockton and Escalon and intermediate points by diversion from the Mariposa Road via Turner, Atlanta and Simms Station, not as a separate operative right, but as an extension and enlargement of applicant's present operative right between Stockton and Oakdale via Colledgeville, Escalon and Valley Home;

and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor, be and the same hereby is, granted to George Doster, subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.

2. 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 (10) days' notice to the Commis-

sion 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. 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.

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 him 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 and the same hereby is 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 16¹⁴ day of December, 1935.

Leon Whitney

M. D. Lee

M. B. Lewis

W. H. Brown

John P. Brown

Commissioners.