

Decision No. 28650

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of E. T. BIHLER for Certificate of Public Convenience and Necessity to operate truck line for hauling of livestock service and commodities pertaining to cattle as a common carrier between various points in Southern California with Los Angeles Union Stock Yards and the Vernon Packing House districts and packing houses and feed yards in and about the City and County of Los Angeles as the focal centers.

Application No. 19533.

ORIGINAL

Richard T. Eddy, for Applicant.

Rex W. Boston, for Jim Ross Livestock Transportation Company, Protestant.

Elmer P. Bromley and H. E. Lindersmith, for Joe Garcia, Protestant.

Robt. W. Brennan and Wm. F. Brooks, for The Atchison, Topeka and Santa Fe Railway Company, Protestant.

H. W. Hobbs, for Southern Pacific Company and Pacific Motor Transport Company, Protestants.

H. C. Grundell and H. W. Hobbs, for Pacific Coast Railway, Protestant.

BY THE COMMISSION:

O P I N I O N

The above entitled application was filed by E. T. Bihler, requesting a certificate of public convenience and necessity for the operation of an automotive service for the transportation of livestock to and from ranches, packing houses, feed yards and stockyards within the area bounded by the terminal points of Santa Maria, Fresno, Bishop, Imperial Valley and San Diego and the Los Angeles Union Stockyards, Vernon Packing House district and packing houses and feed

yards in and about Los Angeles.

Public hearings on this application were conducted by Examiner Gorman at Los Angeles and, the matter having been submitted on briefs and briefs having been filed, it is now ready for decision.

E. T. Bihler, applicant herein, began the business of transporting livestock by truck during 1932 with one piece of equipment and subsequently enlarged the business so that during 1935 four trucks were being operated. By Decision No. 27621, dated December 22, 1934, the Commission found that E. T. Bihler, operating under the fictitious name of Bihler Brothers, was operating with a common carrier status between Los Angeles and Vernon, on the one hand, and Fresno, Santa Barbara, Bishop, San Diego and all points in the Imperial Valley and intermediate points on each route, on the other hand, without a certificate of public convenience and necessity or a prior right, and ordered him to cease and desist from continuing such operations. The case upon which the above decision was issued was filed on May 31, 1934, and the instant application seeking a certificate was filed on July 16, 1934.

Applicant, in support of his request for a certificate, alleges that the greater amount of hauling of livestock by motor trucks in Southern California is rendered by individuals who do not possess certificates of public convenience and necessity; that most of the operators holding certificates of public convenience and necessity for the hauling of livestock in Southern California are not now equipped to render the superior type of service heretofore rendered by applicant; that he has hauled equally as much livestock in the area in question as any other carrier; that during the period applicant has been

operating he has built up a good will among ranchers, livestock producers, dealers and packers in Southern California and has acquired the reputation of being one skilled in the handling and transportation of livestock, and that livestock producers, dealers and packers are unanimous in their desire to have applicant continue to serve them, by reason of the superior quality and better service rendered by him than they are able to secure elsewhere.

Automotive livestock transportation service, in the area herein involved, is now being rendered by two highway common carriers, namely, Joe Garcia and Jim Ross Livestock Transportation. Garcia operates six pieces of equipment and Ross operates one piece of equipment. The railroads, also, are rendering livestock transportation service in this area.

Applicant amended his application so as to propose rates, rules and regulations identical with those of Joe Garcia (C.R.C. No. 2). Bihler has heretofore charged rates substantially less than those proposed herein.

The record shows that there is a comparatively heavy movement of livestock between points in Southern California and the Los Angeles Union Stockyards and the packing plants and feed lots in and about Los Angeles and Vernon. Much of this movement of cattle is conducted by individual producers or allegedly contract carriers. During the lamb season, covering a period of approximately ninety days during the Spring, there appears to be a shortage of equipment available for this movement in Southern California, so that equipment is brought in from other localities.

Several livestock commission agents, producers and

packers testified in behalf of applicant and in practically all instances the testimony shows that these witnesses did not have any preference for a particular carrier but were primarily interested in receiving expeditious truck service at the lowest possible rates. The record shows that applicant transported livestock for all of the above shippers during the period that the Commission found applicant to be operating illegally and at rates below those of the certificated carriers. There apparently is considerable doubt as to whether or not applicant could retain this business in the event the Commission granted a certificate to Bihler under the rates proposed, which are substantially higher than those charged in the past and which, according to applicant, were charged for the purpose of securing the business.

During 1934, the government was carrying on a very extensive tubercular cattle eradication program in the Imperial Valley and during the summer of the same year a serious drought prevailed in the valley, thereby creating a very heavy livestock movement from this area. The eradication program has been practically - if not entirely - completed and the drought situation does not now exist; consequently, this heavy movement has been abated.

Applicant's contention-that the shippers required the alleged superior service being rendered by him and which could not be secured from the certificated carriers and other carriers - is not borne out by the record in this proceeding. The evidence shows that Garcia has been rendering a satisfactory service, with the possibility of a lack of equipment necessary to move the heavy traffic during the tubercular

cattle eradication and drought in the Imperial Valley. This was an abnormal situation and one which may not recur again for several years.

Applicant owns an equity in two trucks and has under lease for his exclusive use two other trucks, having a combined capacity of one carload. The evidence indicates that applicant is not in a very sound financial condition; however, he testified that he had a financial backer, the name of whom he was unwilling to divulge, who would advance the necessary finances for additional equipment and other necessary expenses, in the event this application is granted.

During the Spring lamb season, the peak period of livestock movement into the Los Angeles area, it appears, from the record herein, that from 65 to 70 trucks are necessary to accommodate the traffic. It would not be reasonable or economical to expect an operator to purchase this amount of equipment for use during such a short period of the year, particularly when such equipment may be leased for such use.

Mr. Joe Garcia testified that his equipment is not being operated to capacity during a large part of the year; that during 1935 his business was fifty percent less than in 1933; and that he is financially able to secure additional equipment if and when necessary. Mr. J. A. Ross, of Jim Ross Livestock Transportation, testified that he operates only one truck; that he has not been able to secure any business over his certificated service and that he is able to purchase additional equipment if necessary. The published tariff rates of Ross are considerably higher than those of Garcia and other carriers; consequently, he has been unable

to secure any business and has not been a very potent factor in livestock transportation business.

It would appear that if a certificate were granted to Bihler, there very likely would be a detraction of business from Garcia, who at the present time is unable to secure sufficient business, except during the Spring lamb season, to maintain his operations at reasonable capacity. It is also unreasonable to assume that Bihler would purchase sufficient equipment to meet the peak demand, so that the public would be no better served during this period.

Both Garcia and Ross orally offered to secure such additional equipment as may be necessary to meet the demands of their business if and when such demand is apparent.

After carefully considering all of the evidence herein, we are of the opinion and hereby conclude that public convenience and necessity do not justify the granting of a certificate to applicant, as requested, and that the application should be denied.

O R D E R

E. T. Bihler having filed the above entitled application, public hearings having been held and the Commission being fully apprised of the facts;

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity do not require the establishment by E. T. Bihler of an automotive transportation service as a highway common carrier of livestock between ranches, packing houses, feed yards and stockyards, within the area bounded by the terminal points of Santa Maria, Fresno, Bishop, Imperial Valley and San Diego

and stockyards, packing houses and feed yards in and about
Los Angeles and Vernon; and

IT IS HEREBY ORDERED that the above entitled appli-
cation be and the same is hereby denied.

The effective date of this Order shall be twenty (20)
days from and after the date hereof.

Dated at San Francisco, California, this 23^d day
of March, 1936.

M. B. Cassia
Leon Whittell
M. A. Gun
W. C. ...
Stewart ...
COMMISSIONERS.