

Decision No. 28136

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
D. O. TRINIDAD, doing business under
the fictitious name and style of
TRINIDAD SERVICE COMPANY, for a
Certificate of Public Convenience and
Necessity to operate an automotive
truck line.

ORIGINAL

Application No. 20543.

Edward M. Berol, for Applicant.

CARR, Commissioner:

O P I N I O N

D. O. TRINIDAD, doing business under the fictitious name of TRINIDAD SERVICE COMPANY, for some years has been gathering tomatoes, squash, peppers, garlic, onions and other perishable products at the farms in the vicinity of Merced and transporting them by auto truck to the commission markets at San Francisco and Oakland, and occasionally on the back-haul transporting empty containers. He has a permit as a radial common carrier. Being advised that his operations were of a character that might not fall in the category of radial transportation, he now applies for a certificate of public convenience and necessity to carry on this service as an "on call" common carrier.

A public hearing was had at Merced on September 22, 1936.

No one appeared to protest the granting of the application. There was, however, filed at the hearing a stipulation signed by the attorneys for The Atchison, Topeka & Santa Fe Rail-

way Company, Railway Express Agency, Inc., Southern Pacific Company, Pacific Motor Transport Company, and the applicant, by which the applicant agreed to make certain limitations upon the service he proposed and by which the other parties to the stipulation agreed not to protest the granting of the application. ⁽¹⁾ The applicant requested that his application be amended to conform to this stipulation.

Twenty-five witnesses in addition to the applicant testified as to the need for the service proposed. It appeared from the testimony that there are a large number of small ranchers in the vicinity of Merced raising perishable crops which, in large part, are marketed in San Francisco and Oakland. Late in the afternoon of each day, except Sunday, by the use of pick-up trucks, these perishables are brought from the farms to

(1) The essential provisions in the stipulation are as follows:

"(1) Applicant will not pick up shipments within the corporate limits of any incorporated town or within one-half mile of any railroad station located within the territory in Merced County which he seeks authority to serve; provided, however, this paragraph shall not apply to picking up shipments at the packing house operated by applicant in the City of Merced nor to the stations of Fergus or Batturs on the Southern Pacific Company Railroad Line;

"(2) Applicant will transport only perishable farm products exclusive of potatoes and dried onions in sacks from farms to the commission markets at San Francisco and Oakland and empty containers in return movement from San Francisco and Oakland to said farms;

"(3) Applicant will not transport dried onions and potatoes in sacks;

"(4) Applicant will not transport commodities to any shipping terminal or state refrigeration terminal at San Francisco or Oakland;

"(5) Applicant consents that any certificate of public convenience and necessity granted herein may be restricted as above set forth."

Trinidad's place of business in Merced, loaded on line trucks and transported to the San Francisco and Oakland markets. Each of the various witnesses was of the opinion that truck transportation was essential for the proper marketing of these products. None considered the existing regular common carrier facilities adequate to meet the special needs of the growers. The tariff proposed by Trinidad was deemed reasonable and continued patronage of his service was assured.

The presentation on the whole was unusually persuasive of the need for the service proposed and fully justifies its certification.

D. O. TRINIDAD, doing business under the fictitious name of TRINIDAD SERVICE COMPANY, 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.

I recommend the following form of findings and order:

FINDINGS AND ORDER

A public hearing having been duly had,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FINDS that public convenience and necessity require D. O. TRINIDAD, doing business under the fictitious name of TRINIDAD SERVICE COMPANY, to operate an auto truck service as a common carrier between Merced

and surrounding territory (the area of such surrounding territory being designated in Exhibit "A" of the Application) and San Francisco and Oakland, over the route designated on said Exhibit "A", for the transportation from Merced and said surrounding territory to San Francisco and Oakland of fresh fruits and vegetables, and for the transportation from San Francisco and Oakland to Merced and such adjoining territory of empty containers, all, however, subject to the limitations specified in the stipulation, the essential features of which are set forth in footnote (1) of the opinion.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same is hereby granted to D. O. TRINIDAD, doing business under the fictitious name of TRINIDAD SERVICE COMPANY, subject to the following conditions:

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

2. Applicant shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file in triplicate and concurrently make effective on not less than ten days' notice to the Railroad 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 shown in the exhibit attached to the application in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.

3. 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 obtained.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

The foregoing opinion, findings and order are hereby approved and ordered filed as the opinion, findings and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 29th day of September, 1936.

W B Kern
John C. Whisely
W. J. [unclear]
Walter [unclear]

Commissioners.