

Decision No. 29315

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of)	
SOUTHERN CALIFORNIA FREIGHT LINES,)	
a corporation, for a certificate of)	Application No. 19675.
public convenience and necessity)	
extending its service from Mecca to)	
Calipatria, California.)	

ORIGINAL

H. J. Bischoff, for Applicant.

R. E. Wedekind, for Southern Pacific Company,
Pacific Motor Transport Company and
Railway Express Agency, Inc., Protestants.

Wallace K. Downey, for Pacific Freight Lines,
Protestant.

George Brand, in pro per, Protestant.

BY THE COMMISSION:

O P I N I O N

By its application originally filed in this proceeding Southern California Freight Lines, a corporation, operating as a highway common carrier between Los Angeles and Mecca and other points in the Coachella Valley, under authority previously granted by this Commission, sought a certificate of public convenience and necessity authorizing the extension of its service between Mecca and Niland, via Calipatria, together with the right to operate within a zone extending five miles on each side of the highway traversed and within a radius of five miles from the center of the town of Calipatria. By an amendment subsequently filed

applicant, for the purpose of clarifying a certificate previously granted, sought authority to operate within a zone of ten miles on each side of the highway between Indio and Oasis, and also asked that it be permitted to use as an alternate route to and from Calipatria and Niland the highway lying west of the Salton Sea, via Westmoreland and Oasis, proposing, however, no service to points intermediate Calipatria and Oasis, via Westmoreland.

In its original form the application sought authority to transport all commodities, rates being provided for the handling of produce from Mecca and Calipatria and surrounding territory to Los Angeles, and for transporting general products in the opposite direction. Following public hearings had before Examiner Gorman at Niland and Los Angeles, the matter was submitted. However, upon the filing of a supplemental application on October 5, 1936, whereby applicant undertook to restrict the proposed service to the transportation of farm products and the return of empty containers, over the proposed extension and the alternate route, the matter was reopened for further hearing. On October 27, 1936, a public hearing was had before Examiner Austin at Los Angeles when the matter was submitted and it is now ready for decision.

Applicant's proposal, as limited by the supplemental application, contemplates only the transportation of farm products and the return of empty containers, the request for authority to engage in the transportation of general merchandise having been withdrawn. This service will be conducted over the routes extending both easterly and westerly of the Salton Sea. A blanket rate of 50 cents per 100 pounds for the transportation of produce will be published, no additional charge being exacted for the return of empty containers.

At the hearing on the supplemental application, protests were voiced by Pacific Freight Lines and by George Brand, operating under a permit as a contract carrier. Neither Southern Pacific Company, Pacific Motor Transport Company, nor Railway Express Agency, Inc., appeared or offered any testimony.

In support of its application the applicant introduced evidence to the effect that the towns of Calipatria and Niland, together with the farms surrounding them and bordering the highway connecting them, are now provided with no regular truck service; that the volume of produce moving from this territory to the Los Angeles market justifies the establishment and maintenance of regular scheduled truck service similar to that now provided by applicant between Los Angeles and all points in the Coachella Valley; and that applicant will furnish an adequate service, providing a pick-up of vegetables in the field and a delivery of them at the Los Angeles market by midnight of the same day.

Between Mecca and Calipatria, a distance of 54 miles, the highway lying east of the Salton Sea extends for some 35 miles south of Mecca through an uncultivated area. For the remainder of this distance, approximately 18 miles, it traverses an area devoted to the raising of produce, consisting principally of tomatoes and including also lettuce, egg plant, squash, peas, beans, peppers, and other common vegetables, and cantaloupes as well. Since part of this highway is in poor condition, not suited to the efficient operation of trucks engaged in a service such as that contemplated and subject also to weight restrictions, applicant proposes to operate over an alternate route, west of the Salton Sea between Oasis, Calipatria and Niland, via Westmoreland, serving, however, no intermediate points between Oasis and Calipatria.

In conjunction with its present operations, applicant will conduct a daily overnight service between Calipatria and Niland and Los Angeles, operating under regular schedules, and providing when necessary additional trucks which will leave the Valley as late as 5:00 o'clock P.M., thus enabling the growers to dispose of their produce at the midnight market in Los Angeles. To promote the growers' convenience, a pick-up service will be provided in the fields. The record shows that applicant has adequate equipment, facilities and resources to conduct this service.

At the first hearing eleven growers testified, of whom seven were called by the applicant and four by the protestant. At the second hearing applicant recalled one of these witnesses who previously had testified in his favor and he produced two, who though formerly favoring the protestants were now disposed to support the applicant. At the original hearing applicant also produced five witnesses engaged in other pursuits who described the need of an improved service for the transportation of general merchandise. In view of the narrowing of the issues by the supplemental application, their testimony is no longer material.

Briefly, the testimony of the growers shows that within an area surrounding Niland, adjoining Calipatria on the north, and bordering the highway connecting these points, they are engaged during the season, which extends generally from December 1st to the end of June, varying somewhat according to each commodity and increasing to a peak as it wears on, in raising produce of the varieties described above, a substantial part of which is marketed in Los Angeles. To secure the best price, it is essential that this produce reach the Los Angeles market by midnight or shortly afterward; that arriving later it is held over and brings a lower

price. To meet their demands, an expeditious service providing a late afternoon pick-up in the fields is essential. They have found the rail freight service too slow to suit their needs. At the first hearing several growers testified they were using the then unregulated truck service conducted by Sones & Brand, who, they stated, provided an expeditious service at rates averaging 11 cents per crate and 15 cents per lug, equivalent to 37 cents and 55 cents per 100 pounds, respectively. This they found to be quite satisfactory. Some of these witnesses testified they would use applicant's service, if established, and all who were called at the last hearing so testified. They stated that the facilities of Railway Express Agency, Inc., and of Pacific Motor Transport Company were used only during the off-peak seasons when expeditious truck service was no longer required nor available.

From the testimony of Fred Sones, a trucker who testified at both hearings, it appears that formerly he was associated with George Brand, both of whom operated as Sones & Brand, but not as co-partners, the business originating in this territory being divided between them. The acreage under cultivation in this area, so he testified, has increased substantially during the past five years, there being at present some fifty or sixty growers who ship regularly to the Los Angeles market, their produce moving in heavy volume and requiring an expedited service. This witness, a respondent in Case 4129, was found by Decision No. 29116 in that proceeding to be operating without a certificate as a highway common carrier and was required to desist. At present, he is supporting applicant's proposal.

In the amendment to the application filed February 6th, 1935, applicant sought permission to serve a zone ten miles on each side of the highway between Indio and Oasis. It appears that by

Decision No. 27344, on Application No. 18490, dated September 11th, 1934, applicant was granted an operative right for the transportation of property "between Beaumont and Mecca, laterally for a distance of ten miles on either side of the highway traversed by authority of Decision No. 26138, on Application No. 18977." Applicant points out that the decision is not clear, since it apparently granted the lateral right along the route authorized by Decision No. 26138, to this extent embracing a more extensive territory than the points actually named. By the decision last mentioned the Commission permitted the transfer to Coast Truck Line of certain operative rights then owned by affiliated operating companies. There appears to be a need for the lateral service proposed. Therefore, such a certificate will be granted.

The granting of this application was protested by Pacific Freight Lines and by George Brand. As we have stated, neither Southern Pacific Company, its affiliated companies nor Railway Express Agency, Inc., appeared at the final hearing or offered any testimony, although, at the first hearing, they produced witnesses who described their service.

The record shows that the rail service, both freight and passenger, from Calipatria to Los Angeles is conducted upon the following schedule:

	<u>C.L., L.C.L., & P.M.T. (1)</u>	<u>#365 & #11 Express (2)</u>	<u>#619 Express (3)</u>
Lv. Calipatria	6:00 to 7:00 A.M.	3:41 P.M.	10:33 P.M.
Lv. Niland	7:00 to 8:30 A.M.	4:03 P.M.	10:53 P.M.
Ar. Los Angeles	7:00 to 10:00 P.M.	9:50 P.M.	6:00 A.M.

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- (1) Under this schedule carload, less-than-carload and P.M.T. freight is transported by local freight train to Indio, whence it is handled by west manifest freight train to Los Angeles.
- (2) This service is provided by passenger train #365 connecting at Niland for Los Angeles with passenger train #11.

(continued)

From this schedule it is apparent that produce cannot reach the Los Angeles market via rail freight or Pacific Motor Transport service on the day it was harvested. On the contrary, it must be tendered for shipment the next morning and will not arrive in Los Angeles until 10:00 o'clock P.M., reaching the market one day late. Many of the farmers testified that the afternoon express service was too early and the night schedule failed to reach the midnight market in Los Angeles; moreover, they stated the Railway Express rate of 90 cents per 100 pounds to Los Angeles was too high.

Some three years ago Pacific Motor Transport freight was handled on a train then leaving Calexico around 5:00 o'clock P.M. and arriving at Los Angeles shortly after midnight, so as to provide for delivery at the Los Angeles market by 2:00 o'clock A.M. However, because of lack of patronage the schedule was withdrawn.

From the testimony of Mr. C. G. Anthony, Vice-President of Pacific Freight Lines, it appears that this protestant operates as a highway common carrier between Los Angeles and Imperial Valley points, such as Westmoreland, Brawley, Imperial, Heber, El Centro, Calexico, Holtville and Seeley, providing an unrestricted service as far north as Oasis and serving a lateral zone five miles in width. At Calipatria the service is subject to a restriction limiting all shipments to a minimum of 10,000 pounds for commodities other than dairy products. Competing in this territory not only with Southern Pacific Company and Pacific Motor Transport Company, but with uncertificated carriers as well, this protestant has

(footnotes continued)

(3) This service is provided by passenger train #819. Neither trains Nos. 365 nor 819 will handle P.M.T. freight; they carry passengers and express only.

endeavored to secure a substantial part of the produce originating in this area, having conducted in the past few years various surveys during the course of which growers and packers were interviewed. As a result rates were published designed to meet the going rates of the truck operators. Protestant's efforts have uniformly failed, the uncertificated trucks having invariably secured the business through still lower rates which they established. If any more business is diverted, this witness testified, the revenues of the company derived from traffic moving to and from this territory, now based upon depressed competitive rates, will be still further depleted. To guard against this, the witness stated, this protestant should be protected against invasion of the territory it now serves.

This protestant serves neither Calipatria, Niland, nor the adjacent territory; on the other hand, applicant does not seek directly to enter the field served by Pacific Freight Lines. But the latter has directed attention to the fact that applicant also operates through its affiliate, Southern California Freight Forwarders, an express corporation, which is now serving, through underlying common carriers, the territory south of Niland. Protestant urges that any certificate granted herein should be so restricted as to prohibit any express corporation or freight forwarder from handling traffic originating at points south of Niland at rates less than the combination of local rates available to the general public.

Mr. Henry Bischoff, President of the applicant and also a director of the Southern California Freight Forwarders, testified that the future operations of the two companies in the territory south of Calipatria could not now be forecast. The applicant, however, is not now interested in this phase and has no present intention of operating in this territory through Southern California Freight

Forwarders. He declined to agree to the limitation suggested by protestant Pacific Freight Lines.

From the record, it is clear that applicant's showing relates only to the needs of the producing area adjacent to and lying between the towns of Calipatria and Niland; it has no relation to the necessity, if any, for a through express service. It therefore appears reasonable that in any certificate granted to applicant the Commission should impose a condition inhibiting the applicant from entering into any contract, agreement or understanding, directly or indirectly, with any express company or any highway common carrier for the transportation between Los Angeles and any points in the Imperial Valley south of Niland of any traffic at rates to the general public lower than the combination of local rates over Niland.

The protestant George Brand, who was formerly, but is no longer, associated in business with Fred Sones, testified he was operating between the Niland area and Los Angeles as a highway contract carrier under a permit granted by this Commission, serving some twenty-five growers who, he stated, had found his service satisfactory. He objected to the granting of this application, asserting it would result in impairing his present service.

From the record in this case it is apparent that a need exists for the establishment of a common carrier truck service which will enable the growers in the vicinity of Niland and Calipatria to have their produce transported expeditiously to the Los Angeles market. The present rail freight, Pacific Motor Transport, and Railway Express Agency service do not appear to satisfy their requirements. The proposed service will not compete directly with that conducted by Pacific Freight Lines and in order that the door may not be opened to permit such competition to be brought about through

the instrumentality of Southern California Freight Forwarders, the certificate herein granted will contain an appropriate restriction.

Since protestant Brand operates only as a highway contract carrier, he cannot, in the absence of a certificate, undertake to serve the public generally over any regular route nor between fixed termini, for if he did so, he would be operating unlawfully. The granting of the certificate sought will in no way interfere with the continuance of his present operations. Under existing legislation, there is ample room for the operation, each within his respective sphere, of both highway contract carriers and highway common carriers serving the same territory; their rights do not and should not conflict. The existence of a contract carrier service is not of itself sufficient ground to justify the denial of a certificate where the evidence shows, as it does here, the need for a common carrier service. This is true because of the inherent differences between the two types of carriers. A common carrier must dedicate his facilities to the public, and he can be required by the shippers to provide an adequate service at reasonable and non-discriminatory rates. This, however, is not true as to the contract carrier. He must select a limited number of shippers with whom he may enter into contractual relations upon terms which often vary as to the respective shippers, so that were he operating as a common carrier a manifest discrimination would be created. He does not and cannot hold himself out to serve or enter into contracts with anyone electing to use his facilities, for the moment he does so, he becomes a common carrier whose operations, if conducted over a regular route or between fixed termini, are unlawful unless he holds a certificate; and if carried on within a general area, are forbidden unless he holds

a radial permit. Obviously, where, as here, the need for a service open to all has been shown, the shippers should not be left to the unrestrained discretion of some contract carrier who may or may not, as he sees fit, enter into contracts with any of them. They are entitled, where such a need has been established, to the service of one who may be compelled to meet their reasonable demands. Only in this way may a well rounded and balanced transportation system be developed which will alike meet the requirements of the general public and of those shippers who may elect to engage the services of private carriers. A certificate will therefore be granted.

Based upon the evidence offered at the hearing in this proceeding, THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FINDS AS A FACT that public convenience and necessity require the operation by Southern California Freight Lines, a corporation, of a motor truck service for the transportation of property as a highway common carrier, as defined in Section 2-3/4, Public Utilities Act, between Mecca and Calipatria, via Niland, together with the right to serve a lateral zone of five miles on each side of the highway between said points, over and along said route, and also as an alternate route, over and along the highway between Calipatria and Oasis, via Westmoreland, for the transportation of farm products only from Calipatria and Niland and said zone to Los Angeles, and for the return of empty containers only, from Los Angeles to Calipatria and Niland and said zone, as an extension of the present service of said company now conducted between Los Angeles and Mecca and other points in the Coachella Valley; provided, that no intermediate service may be rendered along said alternate route between Calipatria and Oasis, via Westmoreland.

The Commission further finds that public convenience and necessity require the operation by said Southern California Freight Lines of a motor truck service for the transportation of property as such highway common carrier between Indio and Oasis laterally for a distance of ten miles on each side of the highway traversed by said applicant in conducting its present service between said points.

Applicant 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

A public hearing having been had in the above entitled proceeding, evidence having been received, the matter having been duly submitted, and the Commission now being fully advised:

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA DOES HEREBY DECLARE that public convenience and necessity require the operation by Southern California Freight Lines, a corporation, of a motor truck service for the transportation of property as a highway common carrier, as defined in Section 2-3/4, Public Utilities Act,

between Mecca and Calipatria, via Niland, together with the right to serve a lateral zone of five miles on each side of the highway between said points, over and along said route, and also as an alternate route, over and along the highway between Calipatria and Oasis, via Westmoreland, for the transportation of farm products only from Calipatria and Niland and said zone to Los Angeles, and for the return of empty containers only, from Los Angeles to Calipatria and Niland and said zone, as an extension of the present service of said company now conducted between Los Angeles and Mecca and other points in the Coachella Valley; provided, that no intermediate service may be rendered along said alternate route between Calipatria and Oasis, via Westmoreland.

The Commission further finds that public convenience and necessity require the operation by said Southern California Freight Lines of a motor truck service for the transportation of property as such highway common carrier between Indio and Oasis laterally for a distance of ten miles on each side of the highway traversed by said applicant in conducting its present service between said points.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same is, hereby granted to Southern California Freight Lines, 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. Applicant shall not enter into any contract, agreement or understanding, directly or indirectly, with any express corporation or automotive highway common carrier for the transportation between Los Angeles and any point in the Imperial Valley south of Niland, of any traffic at rates to the general public lower than the combination of local rates over Niland.

4. 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 Railroad Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.

5. 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.

6. 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.

Dated at San Francisco, California, this 30th day of

November, 1936.

M B Harris
Samuel C. ...
W. G. ...
William ...
Stanley R. ...
Commissioners.