

Decision No. 20725

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
HENDRIX TRUCK CO.)
for a certificate of public con-)
venience and necessity.)

Application No. 20725

- O'MELVENY, TULLER & MYERS, by Kent Allen, for Applicant;
- WALLACE K. DOWNEY, for Pacific Freight Lines, Protestant;
- EDWARD STERN, for Railway Express Agency, Inc., Protestant;
- RANDOLPE KARR and EDWARD A. BISSINGER, for Southern Pacific Company, Pacific Motor Trucking Company, and Pacific Motor Transport Company, Protestants;
- HENRY J. BISCHOFF, for Southern California Freight Lines, Protestant;
- PHIL JACOBSON, for G. F. D. Lines, Inc., Protestant.

BY THE COMMISSION:

O P I N I O N

By this application in its original form, H. M. Hendrix and H. W. Hendrix, co-partners, doing business under the firm name and style of Hendrix Truck Co., sought a certificate of public convenience and necessity to establish and operate a highway common carrier service for the transportation of farm products and other property between Los Angeles and points in the Imperial Valley, viz., Niland, Calipatria, Westmoreland, Brawley, Sandia, Holtville, Imperial, El Centro, Heber, Calxico, Seeley, and Mt. Signal. Applicants proposed to provide pickup service at Niland, Calipatria, Brawley, Holtville, Westmoreland, Imperial, El Centro, Heber,

Calexico, and Seeley, to establish permanent terminals at El Centro and Brawley, and to maintain seasonal terminals, open from December to August, inclusive, at Calexico, Niland, and Westmoreland.

A public hearing in this matter was conducted by Examiner Austin at Los Angeles, the matter submitted, and it is now ready for decision.

The granting of this application was protested by Pacific Freight Lines, Railway Express Agency, Inc., Southern Pacific Company, Pacific Motor Transport Company, Pacific Motor Trucking Company, Southern California Freight Lines, and G. F. D. Lines, Inc.

During the course of the hearing it was agreed by counsel for applicants and for protestant Pacific Freight Lines that, following the submission of this matter, there would be filed a written stipulation binding said parties, as follows:

"It is understood by both of the undersigned, as counsel for the respective parties for whom appearances were made in the matter, that Pacific Freight Lines operates no service into Niland, California, nor does it have a certificate of public convenience and necessity authorizing such operation."

Such a stipulation subsequently was filed and is now a part of the record. The protest of G. F. D. Lines, Inc., was withdrawn during the hearing upon applicants' assurance that they would not engage in the transportation of motion picture films and accessories.

Subsequent to the submission of this matter, applicants, with the consent of protestants, excepting G. F. D. Lines, Inc. which, as stated, withdrew its appearance, amended their application so as to limit their request for certification to the transportation of:

- (a) Farm perishable products from all farms and loading and shipping points within the boundaries of the Imperial Valley (excepting farms and loading and shipping points located in the territory served by Southern California Freight Lines under authority of Decision No. 29315,⁽¹⁾ dated November 30, 1936, on Application No. 19675), on the one hand, to Los Angeles, on the other; and
- (b) Box shoo, empty crates, fertilizer, insecticide, and seeds from Los Angeles, on the one hand, to farms (only) located within the farming area applicants seek to serve, as described in the preceding paragraph, on the other hand.

By its order dated December 13, 1937, the Commission vacated the submission of this matter, directed the amended application to be filed, and resubmitted the proceeding upon the evidence previously taken. The issues, however, have been narrowed substantially.

At the outset, we believe it pertinent to sketch broadly the general outline of the transportation conditions prevailing in the Imperial Valley.

Extending from Niland southerly to the Mexican border, and from Seeley and the southeastern end of Salton Sea on the west to Holtville and the irrigation canal on the east - a territory roughly forty miles long and twenty miles wide - the Imperial Valley embraces an area of approximately 1000 square miles. In this valley

(1)

"...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

are situated hundreds of farms and ranches, ranging in size from a few acres to 1,000 acres or more. Its products, for the most part, are of a highly perishable nature, including lettuce, cantaloupe, peas, asparagus, tomatoes, squash, and watermelons, as well as hay and grain.

Throughout the period of crop maturity, which commences as early as November 1 and extends approximately to July 20 of the succeeding year, many seasonal peaks occur, which require substantial increases in the transportation facilities needed to move these products. Due to the extremely perishable nature of the great bulk of these commodities and to the necessity, now grown to be a custom of the trade, for delivering them to market no later than midnight of the day of shipment, the need for an expedited and highly flexible transportation service has become imperative.

From the record in this proceeding it was developed that, for the most part, trucks have proved to be the most logical means of transportation to employ. Smaller trucks, with a capacity of five or six tons, most satisfactorily perform the fast service vitally needed to transport these products to market. Because of the sacrifice of speed and dispatch entailed, neither large trucks nor trucks and trailers can be used satisfactorily. The distances traversed are so short that refrigerated equipment is not essential.

The experience of certificated operators in this territory, as developed by the record, demonstrates that despite their efforts to obtain this traffic through reduced rates, they have continued

Footnote (1), continued from page 3:

"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."

to lose ground. The testimony of the shippers, however, indicates that price alone is not the controlling factor; in order to assure the movement of their products they found it necessary, because of the service and schedule limitations of the certificated operators, to utilize other carriers. Although the certificated carriers were not generally regarded as furnishing an inadequate service within the limits of their capacity, there still appeared to be a demand for additional service, particularly during seasonal peaks.

In considering the protests of the certificated carriers to the granting of this application, it is well to bear in mind the fact that these protestants are engaged in transporting general commodities as well as farm produce. Moreover, they serve other extensive districts as well as Imperial Valley. We are called upon, therefore, to determine whether they alone are best fitted to serve exclusively a territory which, by reason of its highly specialized seasonal and perishable products, is vitally in need of a transportation service just as highly specialized and attuned to its peculiar needs.

To serve this territory adequately, it is necessary that pickup trucks be employed to gather the produce from the fields and farms and transport it to various terminal points, where it is transferred to line-haul trucks and brought to the marketing centers. From the record it appears that the bulk of the produce moving from the Imperial Valley, aside from interstate shipments moving east by rail (of which there is a heavy volume), is destined to the Los Angeles commission houses; only a small percentage is transported to San Diego.

Applicant Harry W. Hendrix, testifying on his own behalf, stated that, in partnership with E. M. Hendrix, he had been engaged

since 1930 in the business of transporting products between Imperial Valley points and Los Angeles, and that for some fifteen years he had been in the transportation business. He testified that applicants propose to operate two ten-ton, five six-ton, one four-ton, and one two-ton truck. They are able, so he stated, to provide additional equipment as the needs of traffic may require. They will maintain permanent terminals at Brawley and El Centro, seasonal terminals at Calexico, Niland, and Westmoreland, and will provide pickup trucks at Niland, Brawley, Holtville, Westmoreland, and El Centro.

As shown by amended Exhibit "B" (the time schedule), applicants propose to leave Los Angeles at 9:00 P.M. daily, arriving at Westmoreland at 3:00 A.M., Brawley 3:30 A.M., El Centro 4:00 A.M., Calexico 4:30 A.M., Holtville 4: A.M., and Niland at 5:00 A.M. Arrival times at Westmoreland, Calexico, Holtville, and Niland will depend upon whether there is any freight from Los Angeles destined to these points. Applicants propose to leave El Centro and Brawley at 5:00 P.M. and 6:00 P.M., respectively, arriving in Los Angeles at 1:00 A.M. They propose a pickup service to be maintained either from El Centro or from Brawley to all Imperial Valley points except while seasonal terminals are maintained in Westmoreland, Calexico, Holtville, and Niland, when pickup service will be maintained from the nearest terminal. While the seasonal terminals are open, the following minimum time schedule will be maintained, viz., leaving Calexico, Holtville, and Niland at 12:00 noon, leaving El Centro at 12:30 P.M., Brawley at 1:30 P.M., and Westmoreland at 2:00 P.M., and arriving in Los Angeles at 9:00 P.M. They also propose to dispatch trucks, if needed, from these Imperial Valley points, every half-hour or oftener,

maintaining a seven-hour schedule between Westmoreland and Los Angeles. If no load is available, the trucks will return empty to the valley.

Applicant Harry W. Hendrix admitted that by Decision No. 29116 in Case 4129, wherein he was one of the respondents, he had been found to be operating as a highway common carrier without proper authority and had been ordered to cease and desist. His brother, H. M. Hendrix, was also a party to that proceeding. He is still engaged in transporting property, so he stated, for Zellerbach Paper Company only, under a written contract with that company. It is apparent that applicants are endeavoring in good faith to comply with the inhibitions of that decision.

The transportation needs of the Imperial Valley are such as to demand special consideration. It is an area devoted to the raising of produce, hay and grain, which, for the most part, are highly perishable in nature; because of this, an expedited and a flexible transportation service must be made available to assure the timely arrival of these commodities at market; the operation is seasonal and subject to peaks of production which, in turn, entail peak transportation service; trucks have been found to be the most dependable means of transportation; save in few instances, rail service has proved too slow; the certificated common carrier service now available, while adequate within its scope, and particularly for the transportation of general freight, has not been found satisfactory to handle shipments of produce in the manner demanded by growers; the applicants are experienced operators, thoroughly familiar with the needs of the territory, willing, able, and capable of providing a service which will be satisfactory to both shippers and growers; the

Los Angeles market receives the bulk of these products, aside from interstate shipments; there appears to be a public need for the service proposed by applicants, limited to the transportation of produce, hay, and grain from Imperial Valley points to Los Angeles, and for a return movement of certain commodities such as box shock, empty containers, fertilizer, insecticides, and seeds.

Because of the severe competition existing between the carriers, the general transportation situation in the Imperial Valley, particularly so far as it relates to such products as hay, grain, flax, and fruit, is decidedly unhealthy. It presents a situation not easily corrected, and a problem difficult to solve. This is so because of several important factors, among which are the extremely perishable nature of most of the products of the valley; the existence of operating difficulties due to the far-flung extent of the production centers and the network of roads and routes necessary to be traversed in order to pick up and distribute the shipments; the varying seasons of maturity for different crops, together with "peak" demands for transportation facilities; the necessity, induced and created by economic conditions, forcing growers and buyers alike to meet marked "dead lines" if they hope to realize a compensatory return for their labor and effort; the need thus engendered for a fast, flexible service, manned by experienced operators, which will be available without fail to all shippers and growers; and the necessity for actual field pickup, and market and shed delivery, which trucks alone are able to perform with any degree of success. That these factors all exist has been clearly established.

From previous investigations by the Commission of conditions indigenous to this territory, it is apparent that truck transportation rates have been steadily hammered down until the going rates are far below those which may even be deemed compensatory, - a condition which has resulted from the competition of hundreds of "wild-cat" truck

operators who have moved into the valley during producing seasons, taken the cream, and then decamped.

That "permitted" carriers have been unable legally to handle this tremendous produce movement is best exemplified by the findings in the Commission's Decision No. 29116 in Case No. 4129, where some fifty-two truckmen, holders, for the most part, of permits as contract or as radial carriers, were directed to discontinue their operations because they had transmuted their operations into those of highway common carriers, conducted without proper certificates of public convenience and necessity.

While it has not been and will not be the policy of the Commission to condone illegal operations over the highways of this State, it seems apparent that in this particular instance the past operations of applicants, far from representing a deliberate attempt to evade the law, reflect, rather, an endeavor on their part to perform to the best of their ability a vitally needed service with the only tools they had at hand, namely, permits issued under the Highway Carriers' Act, which, clearly, have proved inadequate.

The transportation problem of this valley cannot be solved by indiscriminately sweeping all of these carriers from the highways. By continuing to operate under permits, they cannot satisfy the demands of the shippers. That the existing certificated carriers and the rails can adequately handle the heavy traffic, particularly that moving during the peak seasons, is not borne out by testimony of those vitally interested in promoting the success of the valley, including the farmers, growers, and buyers.

Having in mind the need for an expeditious and flexible transportation service, it is the Commission's view that there should be issued to these carriers, who in good faith have applied for such

authority, certificates of public convenience and necessity limited to the transportation of agricultural products. Thus, the growers and producers will be accorded a service for which there exists a very definite necessity; only in this way will the fruits of their labor be preserved. Because of the demand for a service adequate to meet all requirements arising during seasonal peaks, sufficient certificates of such limited character will be granted to ensure the prompt movement of all the traffic.

The establishment of a service for the transportation of general commodities is not supported by the record.

A certificate of public convenience, limited in the particulars stated, will therefore be granted.

H. M. HENDRIX and H. W. HENDRIX, co-partners doing business under the firm name and style of HENDRIX TRUCK CO., are 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 held in the above entitled proceeding, the matter having been submitted, and the Commission being now duly advised in the premises:

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by H. M. Hendrix and H. W. Hendrix, co-partners doing business under the firm name and style of HENDRIX TRUCK CO., of an automotive service as a highway common carrier as such is defined

in Section 2-3/4 of the Public Utilities Act, seasonally, from approximately November 1st of each year to approximately August 1st of the succeeding year, for the transportation of

- (a) Hay, straw, grain, fresh fruits, fresh vegetables edible nuts, fresh or dried beans, and fresh or dried peas from the Imperial Valley points of Calexico, Eber, Holtville, Sandia, Brawley, El Centro, Imperial, Seeley, Mt. Signal, Westmoreland, Calipatria and Niland and an area within a radius of fifteen miles from each of said points, on the one hand, to Los Angeles, on the other hand, and
- (b) Box shoo, empty crates or boxes, fertilizer, insecticides, and seeds from Los Angeles, on the one hand, to farms only located within the area referred to in paragraph (a), on the other hand,

via U. S. Highway No. 99, and subject to the restriction that no transportation service may be performed by applicants from or to Los Angeles and farms and shipping points in the Imperial Valley served by Southern California Freight Lines under authority of Decision No. 29315, in Application No. 19675, dated November 30, 1936.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and it hereby is, granted to H. M. Hendrix and E. W. Hendrix, co-partners doing business under the firm name and style of HENDRIX TRUCK CO., subject to the following conditions:

1. Applicants shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicants 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 (10) 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. Applicants 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 (5) days' notice to the Railroad Commission and the public, a time schedule or 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 obtained.

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

6. Applicants shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No. 91.

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 3rd day of

January, 1938.

Nathan Mann
Leon Ouellet
Francis P. Hill
Harold W. Anderson
Ray L. Rice
Commissioners.