

Decision No. 20874

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
HUE FOLLENDORE, doing business as)
Hue's Transfer, for certificate of)
public convenience and necessity to)
operate an automobile trucking)
service as a common carrier for com-)
pensation for the transportation of)
farm products between points located)
within the Imperial Valley on the)
one hand and Los Angeles and Los)
Angeles Harbor and San Diego on the)
other hand, with a return movement)
of farm supplies.)

ORIGINAL

Application No. 20874*

REX W. BOSTON, for Applicant;

C. F. REYNOLDS, for San Diego Chamber of Commerce
& Shippers, Interested Party;

HAROLD S. DILL, for Truck & Warehouse Association of
San Diego and Imperial Counties,
Interested Party;

HENRY J. BISCHOFF, for Southern California Freight
Lines and Southern California
Freight Forwarders, Protestants;

WALLACE K. DOWNEY, for Pacific Freight Lines,
Protestant;

L. M. PHILLIPS, for C. H. McCarty, Protestant;

EDWARD STERN, for Railway Express Agency, Inc.,
Protestant;

RICHARD E. WEDEKIND, for Southern Pacific Company,
Pacific Motor Transport Company,
San Diego, Arizona and Eastern
Railroad and Pacific Motor Trucking
Company, Protestants.

BY THE COMMISSION:

O P I N I O N

By this application Hue Follendore, operating under the
name and style of Hue's Transfer, seeks a certificate of public

convenience and necessity to establish and operate an automotive service as a highway common carrier between ranches, farms, groves, and other points of production near or adjacent to El Centro, Holtville, Imperial, Brawley, Calipatria, and Westmoreland, points within the Imperial Valley, on the one hand, and Los Angeles, Los Angeles Harbor (Wilmington and San Pedro), and San Diego, on the other hand, for the transportation of farm products, with a return movement of certain defined farm and packing house supplies. Applicant further proposes to render a service to the intermediate points of Riverside, Hemet, Redlands, San Bernardino, Colton, Ontario, Pomona, and vicinities for the transportation of hay and grain from Imperial Valley points to said intermediate points and their vicinities, and for the transportation of shock and fertilizer from Pomona to said Imperial Valley points.

A public hearing in this matter was conducted by Examiner Austin at El Centro, when the matter was submitted, briefs filed, and it is now ready for decision.

Southern California Freight Lines, Southern California Freight Forwarders, C. H. McCarty, Railway Express Agency, Inc., Southern Pacific Company, San Diego, Arizona and Eastern Railroad, Pacific Motor Transport Company, and Pacific Motor Trucking Company protested the granting of this application.

At the hearings, applicant Follendore amended his application to provide for the transportation of hay and straw (alfalfa, wheat, barley, and oats); grain (wheat, barley, oats, milo, and flax); seeds of all kinds; citrus fruits (grapefruit, tangerines, oranges, and lemons); grapes; apricots; nuts (walnuts and pecans); feeds (cotton-seed, cotton-seed meal, soy bean meal, bran milo, corn wheat,

barley, alfalfa meal, sesame meal, copra meal, fish meal, oyster shell and mineral shell in all forms, dried milk, beet pulp and other livestock and poultry feeds); lettuce; carrots; asparagus; radishes; beets; tomatoes; cabbage; eggplant; rhubarb; peas and beans, green and dried; sweet potatoes, cucumbers, squash, spinach, peppers, cauliflower, watermelons, cantaloupes, honey dew melons, Jap melons, Persian melons, honey ball melons, casaba melons, chicory, and endive. The application was also amended to include Long Beach Harbor as a point to be served. Operations will be conducted via U. S. Highway 99 from Imperial Valley to Los Angeles, and via U.S. Highway 80 to San Diego.

Eue Follendore, testifying on his own behalf, stated he had been engaged in the trucking business for twelve years; that he had hauled fruit and produce (principally grapefruit, lettuce, and carrots), hay, grain, barley, flax, and milo. To some extent he has transported these products to Los Angeles (these shipments comprising principally truck-load lots of hay and grain, viz., barley, flax, and milo, with an occasional load of grapefruit or dry-pack lettuce), but for the most part his hauling has been conducted between the fields and the packing-sheds. He has transported nothing from San Diego. Ordinarily, grapefruit has been hauled directly from the field or grove to market, but lettuce (dry-pack, not iced) was handled both to packing-sheds and to market. On the return trip, he has transported fertilizer from Los Angeles and Pomona. He stipulated he would not serve Niland, nor would he render any service five miles north of a line drawn east and west through the center of Calipatria.

From the record, it appears that applicant has been operating in this territory in good faith, serving a number of shippers and growers located principally in and near Holtville and El Centro.

The testimony of public witnesses generally in regard to the handling of produce and grain supported the applicant, clearly indicating a demand for his service. A trucking service is indispensable, it appears, because of the speedy and direct pickup and delivery it affords. Hay and grain, it was shown, generally move in large quantities, the loads averaging around ten tons. There is a back-haul to the farms of fertilizers, consisting of commercial phosphates. In this respect, the evidence disclosed that the direct delivery of fertilizer to the fields or to the farms was advantageous, since ordinarily the sacks will break if handled more than twice.

It appears that hay is harvested from March to November; by volume, alfalfa is the principal crop, followed by barley and oats in the order named. These products are baled and sold in the field, some moving out by rail but the bulk being handled by truck. Because the truck has eliminated the movement from the field to the rail facility, it has resulted in lowering the handling cost to the growers, it has enabled crops to be moved sooner and with greater dispatch, and it is distinctly advantageous in the transportation of small, less-than-carload movements which must be made from time to time, in order to permit irrigation of the land.

Applicant has found it impossible, particularly during the early part of the season, to secure a full load from a single ranch. Therefore it has become his practice to pick up and consolidate the shipments of several patrons, in order to get a load.

The evidence discloses that trucks are indispensable, because of the highly perishable nature of most of the commodities grown, and the necessity for a rapid, flexible service direct from

field to market. In order that growers may have reasonable assurance of getting their produce to market by midnight of the day of shipment or by 1:00 A.M. of the succeeding day,- an hour which marks the deadline beyond which the best prices are no longer available,- the establishment of such a service is essential. It would be distinctly advantageous for such a service to be conducted by an operator such as applicant, thoroughly familiar with conditions prevailing in the valley. So great was the need for such a specialized service that some of the growers, so they testified, were contemplating purchasing and operating their own trucks.

While the record does not warrant any substantial criticism of the common carrier service rendered by protestants, particularly as to the handling of general freight, it clearly is evident that the shippers and growers of the valley are dissatisfied with the service, and have united in a demand that more and further service, preferably under certificates, be provided.

Protestants' contention that the application should be denied on technical grounds for failure strictly to comply with certain tariff and operating regulations cannot be upheld. We believe, rather, that the picture should be viewed broadly and a decision be rendered designed to accommodate the particular and exacting conditions in this territory. (1)

(1) For a more complete statement of conditions prevailing in the Imperial Valley, which, in the Commission's judgment, indicate a need for a service of this character, reference is made to this Commission's decision in Application No.20725, this day decided. These statements omitted here in the interest of brevity are to be deemed part of this opinion.

The record herein will not support a finding that public convenience and necessity require the inauguration of an additional common carrier service between Imperial Valley points and San Diego, Los Angeles Harbor or Long Beach, nor to any points intermediate to the valley and Los Angeles. However, applicant should be authorized, as a highway common carrier, to transport farm products from farms, groves, and other producing centers in or adjacent to the Imperial Valley points of Holtville, El Centro, Imperial, Brawley, Calipatria, Westmoreland, and an area within a fifteen mile radius of each of these points, on the one hand, to Los Angeles, on the other hand; and he should be permitted to transport fertilizer only from Los Angeles and Pomona to said Imperial Valley points. Such operations shall be conducted via U. S. Highway 99. No service shall be rendered to or from Niland nor within the territory situated five miles north of a line drawn east and west through the center of Calipatria. In all other respects, the application will be denied.

Eue Follendore 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 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 Hue Follendore, doing business under the name and style of HUE'S TRANSFER, of an automotive service as a highway common carrier, as such is defined in Section 2-3/4 Public Utilities Act, from farms, groves, and other producing centers in or adjacent to the Imperial Valley points of Holtville, El Centro, Imperial, Brawley, Calipatria, Westmoreland, and an area within a fifteen-mile radius of each of said points, on the one hand, to Los Angeles, on the other hand, seasonally, from approximately November 1st of each year to August 1st of the succeeding year, for the transportation of hay, straw, grain, seeds, fresh fruits, edible nuts, animal and poultry feed, fresh vegetables, fresh or dried beans and fresh or dried peas, and for the transportation of fertilizer only from Los Angeles and Pomona to said Imperial Valley points herein described, via U. S. Highway No. 99, subject to the following restriction, viz., that no service will be rendered to or from Niland or from the territory situated five (5) miles north of a line drawn east and west through the center of Calipatria.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted to HUE FOLLENDORE, doing business under the name and style of HUE'S TRANSFER, 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 (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. 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 (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 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.

6. Applicant 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.

IT IS HEREBY FURTHER ORDERED that in all other respects Application No. 20874 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 3rd day of

January, 1937.

[Signature]
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Commissioners.