

Decision No. 31187

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of SYSTEM ARIZONA EXPRESS SERVICE,)
a corporation, for Certificate of)
Public Convenience and Necessity)
to Operate a Highway Carrier Ser-)
vice, as a Common Carrier, between)
Los Angeles and vicinity on the one)
hand, and Winterhaven, California,)
on the other hand.)

Application
No. 21215

In the Matter of the Application)
of SOUTHERN CALIFORNIA FREIGHT)
LINES, a corporation, for a certi-)
ficate of public convenience and)
necessity authorizing it to extend)
its service from Holtville to Laguna)
Reservoir and all intermediate points.)

Application
No. 21241

In the Matter of the Application)
of LOS ANGELES, YUMA AND PHOENIX)
FREIGHT LINES for a certificate of)
public convenience and necessity)
authorizing it to transport pro-)
perty as a common carrier between)
Los Angeles, California, on the one)
hand, and the east city limits of)
Holtville, California, and Laguna)
Dam and intermediate points and)
five miles on each side of the)
highway between said intermediate)
points on the other hand.)

Application
No. 21253

Arthur H. Glanz, for System Arizona Express
Service, Applicant in Application No.
21215; Protestant in Applications Nos.
21241 and 21253.

H. J. Bischoff, for Southern California Freight Lines, Applicant in Application No. 21241; Protestant in Application No. 21215; and for Los Angeles, Yuma and Phoenix Freight Lines, Applicant in Application No. 21253; and Protestant in Application No. 21215.

E. Bissinger, for Southern Pacific Company and Pacific Motor Transport Company, Protestants.

Edward Stern, for Railway Express Agency, as its interest may appear.

Wallace K. Downey, for Pacific Freight Lines, Protestant in Application No. 21215; and as its interest may appear in Applications Nos. 21241 and 21253.

F. W. Turcotte, for Dale C. Ramsey in Applications Nos. 21241 and 21253, as his interest may appear.

Percie C. Thacker, for Pioneer Truck and Transfer Company, interested party in Application No. 21215.

Frank B. Dorsey, for San Diego, Arizona and Eastern Railway in Application No. 21215, as interested party.

Mrs. J. H. Underhill, for T. W. Underhill, Protestant in Applications Nos. 21215 and 21241.

Harold W. Dill, for Truck and Warehouse Association of San Diego and Imperial Counties, interested party.

D. G. Shearer, for Certificated Highway Carriers, Inc., interested party.

BY THE COMMISSION:

O P I N I O N

These proceedings are applications for certificates of public convenience and necessity as highway common carriers.

In Application No. 21215, as amended at the hearings, System Arizona Express Service seeks a certificate for the transportation of general commodities, with certain exceptions, between Los Angeles and other points in the metropolitan Los Angeles area, on the one hand, and Winterhaven and points intermediate to Winterhaven and the easterly limits of Holtville, and points within a distance of twenty-five miles laterally on either side of U. S. Highway 80 east of Holtville, on the other hand; also between San Diego and El Centro, on the one hand, and the above described territory east of Holtville, on the other hand.

In Application No. 21241 Southern California Freight Lines seeks a certificate of public convenience and necessity extending its existing rights between San Diego and Holtville and Imperial Valley points, to include operations between Holtville and Winterhaven, and points intermediate to Holtville and Winterhaven and within a distance of five miles laterally on either side of U. S. Highway 80 east of Holtville.

In Application No. 21253 Los Angeles, Yuma and Phoenix Freight Lines seeks a certificate of public convenience and necessity between Los Angeles, on the one hand, and Laguna Dam and points intermediate to Laguna Dam and the easterly limits of Holtville, and points within a radius of five miles on either side of U. S. Highway 80 east of Holtville, on the other hand.

Public hearings were held before Examiner Elder in Los Angeles on October 5th, 6th and 7th and November 17th, 1937, and in San Diego on November 16th, 1937. The applications were heard on separate records but will be dealt with in a single opinion.

The evidence in all three proceedings is virtually the same as to the description of the territories to be served and the volume of traffic moving. Winterhaven is a community located just on the California side of the Colorado River within two miles of Yuma, Arizona. Some forty or fifty families reside in the immediate vicinity, and the surrounding district has a population of approximately five hundred persons. In the town are two merchandise stores, two liquor stores and eating places and several service stations. There is some agriculture in the vicinity. The lettuce, alfalfa, cotton and vegetables produced are packed and shipped mainly in Yuma, though some cotton goes to Los Angeles Harbor. The construction of the All-American Canal has resulted in a movement of machinery, equipment, materials and supplies to contractors, chiefly at Imperial Dam and Potholes a few miles north-east of Winterhaven. The volume of this traffic is diminishing as construction work in that locality nears completion. A few additional stores and service stations are located on the lateral highway between Winterhaven and Laguna. The territory intermediate to Holtville and Winterhaven, a distance of forty-eight miles, is desert and contains no agriculture and no business except a combined service station and restaurant each at Midway Wells, Grays' Well and Springer. Mines are located on lateral roads north and south of U. S. Highway 80; but these laterals are said to be inadequate for line haul trucks.

Supplies for the territory move from Yuma, Los Angeles, San Diego and El Centro. Yuma is the principal trading center for the territory around Winterhaven although the latter has an advantage in gasoline sales due to a lower tax in California than in Arizona.

The territory is served by the Southern Pacific railroad from Los Angeles with a branch line from Yuma to Potholes, near Laguna Dam; also by several truck lines, including all three of the present applicants. Traffic not handled over the Potholes branch of the railroad is transported from Yuma to California points by truck, Underhill Transfer performing much of this hauling. It has been the practice of the truck lines to distribute the California freight out of Yuma, transferring it from line haul to delivery trucks at terminals there. As will be more fully discussed hereinafter, this practice seems to be based upon considerations of operating convenience and economy.

In Application No. 21253 of Los Angeles, Yuma and Phoenix Freight Lines and Application No. 21241 of Southern California Freight Lines it appears that both applicants expect to continue handling the traffic in the same manner as in the past, transferring the freight to delivery trucks at the carriers' Yuma terminals for distribution to the California points. Los Angeles, Yuma and Phoenix Freight Lines urges that the volume of the traffic is too small to justify maintenance of a terminal on the California side of the river. Delivery of the intrastate traffic from the line haul trucks enroute is not proposed, presumably because less practicable than the present method of distribution.

Applicants in both Application No. 21241 and Application No. 21253 thus seek certificates of public convenience and necessity for operations which are plainly interstate in character and over which the Railroad Commission has no certificating jurisdiction. The applications must be denied for this reason. It is appropriate to observe, however, that the witnesses called by these applicants testified that the present service of both carriers to Winterhaven and to the construction camps is satisfactory. Few of the witnesses knew and almost none seemed to care whether or not the freight moved

direct to destination or through Yuma. Claude A. Hodgeman, testifying on behalf of the Port of San Diego and the Shippers' Committee of the San Diego Chamber of Commerce, urged the extension of Southern California Freight Lines' certificate to provide a service to points intermediate to Holtville and Winterhaven; but he stated he had no knowledge of any traffic moving into the area nor of any shipper experiencing any difficulty due to lack of transportation facilities in that territory.

In Application No. 21215 System Arizona Express Service insists that the practice of handling California freight through Yuma is a subterfuge and that its application should be granted to provide a direct intrastate service subject to this Commission's jurisdiction. This applicant also maintains a terminal at Yuma and has located there several trucks used partly for the distribution of the California freight. In operating under the proposed certificate, applicant would establish a depot at Winterhaven where the Yuma-bound interstate truck would discharge California freight. Trucks now stationed at Yuma would be placed at Winterhaven if traffic demands, or otherwise would be operated out of Yuma, to pick up the California freight at the Winterhaven depot for delivery. Direct delivery to consignees at Winterhaven from the line haul trucks is also proposed although it is questioned, and not satisfactorily established in the record, that this would be practicable in view of the hours at which the line haul trucks pass through Winterhaven. It was admitted by an operating witness for applicant that the establishment and maintenance of the California depot would be an added expense and, from the

carrier's standpoint, a less desirable method of handling the traffic than the present.

Among the shippers who testified for applicant were Joseph Fleming, Chief Clerk for Westinghouse Electric and Manufacturing Company; S. G. Brewer, Traffic Manager for Simon Levi Company, wholesale grocery and liquor dealers; and H. F. Gulde, Assistant Traffic Manager for Firestone Tire and Rubber Company. Each testified his company has shipments moving from Los Angeles to Winterhaven or the All-American Canal and would use a direct common carrier service if it existed. Witness Fleming, whose company ships to the construction camps, says the rail service is satisfactory when the consignee is located on the Laguna branch but not when receivers have to send their own trucks to receive the goods. He was unaware of the existing truck services conducted via Yuma. Witness Brewer felt the direct truck service would afford receivers quicker deliveries in Winterhaven but had received no complaints regarding the service now rendered via Yuma. He stated the additional handling involved in the Yuma transfer is not in itself objectionable to him. Witness Gulde also anticipated faster service through a direct delivery, but had no complaint regarding the handling of the shipments through Yuma. Applicant was prepared to produce other shippers and receivers of freight whose testimony, it was stated, would be of the same nature and to the same effect as the foregoing.

It is apparent from the record that although traffic into the territory is light and, as to certain kinds at least, diminishing in volume, there is an appreciable movement from Los Angeles and vicinity to Winterhaven, Laguna and Imperial Dam site

for which truck transportation, now being rendered via Yuma, is necessary. There is nothing to show that this method of handling the freight has been adopted as a subterfuge. It appears rather to be simply sound operating procedure. Yuma, the chief trading center of the locality, which receives by far the largest volume of traffic, is the natural place for carriers to establish their terminals and to transfer freight for local delivery. It is purely incidental that this requires the crossing and recrossing of the state line in handling shipments destined to the western part of the Yuma trading area and renders the movement interstate in character.

Nevertheless, the points of origin and destination of the traffic in question are all within the State of California and it is feasible, though with some added inconvenience to the carrier, to handle the traffic without going outside the State. If the applicant desires to fill the need for the service by an operation wholly intrastate it should be permitted to do so. The record is silent with regard to whether or not any of the truck carriers have operative rights from the Interstate Commerce Commission under the Motor Carriers' Act to conduct the operation by moving the traffic interstate via Yuma.

As to the territory intermediate to Holtville and Winterhaven, there is no showing that any appreciable volume of traffic exists for which service is required. The record is similarly lacking in any evidence of public convenience and necessity for service from San Diego or El Centro to Winterhaven, Laguna or Imperial Dam, or for service 25 miles laterally on either side of

Highway 80. Applicant's witness Childs testified such a lateral right is not necessary. Those portions of the application, therefore, should be denied.

System Arizona Express Service, a corporation, 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.

ORDER

Public hearings having been held in the above entitled proceedings, evidence having been received and the matters duly submitted and the Commission now being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by System Arizona Express Service, a corporation, of an automotive service as a highway common carrier, as that term is defined in Section 2-3/4 of the Public Utilities Act, for the transportation of freight, except gold bullion, livestock and bulk liquids in tank trucks, between Los Angeles, Vernon, Huntington Park, Glendale, Pasadena, Beverly Hills, Santa Monica, Long Beach, Huntington Beach, El Segundo, Maywood, Bell, Alhambra and the territory outside the boundaries of

said cities but within the pickup and delivery zone proposed by applicant described as follows:

"PICKUP AND DELIVERY LIMITS OF LOS ANGELES

Including both sides of streets, avenues or boulevards mentioned as boundaries:

Beginning at the intersection of North Broadway and Mission Road, westerly on North Broadway to Daly St., northerly on Daly St. and Pasadena Ave. to North Figueroa St., southerly on North Figueroa St. to Avenue 26, westerly on Avenue 26 to San Fernando Road, northerly on San Fernando Road to Fletcher Drive, westerly on Fletcher Drive to Riverside Drive, southerly on Riverside Drive to San Fernando Road, southerly on San Fernando Road to Pasadena Ave., southerly on Pasadena Ave., and North Broadway to Bernard St., westerly on Bernard St. and Lilac Terrace to Sunset Blvd., westerly on Sunset and Hollywood Blvd. to Western Ave., southerly on Western Ave. to Wilshire Blvd., westerly on Wilshire Blvd. to Crenshaw Blvd., southerly on Crenshaw Blvd. to Slauson Ave., easterly on Slauson Ave. to Van Ness Ave., southerly on Van Ness Ave. to Manchester Ave., easterly on Manchester Ave. to Alameda St., southerly on Alameda St. to Century Blvd., easterly on Century Blvd. to Santa Fe Ave., northerly on Santa Fe Ave. to Tweedy Blvd., westerly on Tweedy Blvd. to Alameda St., northerly on Alameda St. to Firestone Blvd., easterly on Firestone Blvd. to Atlantic Ave., northerly on Atlantic Ave. to Patata St., easterly on Patata St. to Wilcox Ave., northerly on Wilcox Ave. to Randolph St., easterly on Randolph St. to Garfield Ave., northerly on Garfield Ave. to Anaheim-Telegraph Road, northerly on Anaheim-Telegraph Road to Gasper Ave., northerly on Gasper Ave. and Gearhart St. to 9th St., westerly on 9th St. to Indiana St., northerly on Indiana St. to Ramona Blvd., easterly on Ramona Blvd. to Miller Ave., northerly on Miller Ave. to Alhambra Ave., westerly on Alhambra Ave. to Mission Road, thence northerly on Mission Road to starting point",

on the one hand; and Winterhaven, Laguna, Imperial Dam and points intermediate to Winterhaven and Imperial Dam, on the other hand; via Highway U. S. 99 between Los Angeles and El Centro, via Highway U. S. 80 between El Centro and Winterhaven, and via state or county road between Winterhaven and Imperial Dam and intermediate points.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same hereby is granted to System Arizona Express Service, a corporation, to perform the above described service subject, however, 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 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 Application No. 21241 and Application No. 21253 be and each of them is hereby dismissed.

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

Dated at ~~San Francisco~~ ^{Los Angeles}, California, this 14th day of August, 1938.

Ralph W. Johnson
Leon S. Caldwell
Frank S. Stein
Ray L. Carey

COMMISSIONERS.