

Decision No. 32784

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
GEORGE BRAND and H. B. BRAND, for )  
Certificate of Public Convenience and )  
Necessity to operate a truck service ) Application No. 22506.  
as a common carrier between Niland )  
and Calipatria, California, and Los )  
Angeles, California. )

Wolford & Heald, by D. E. Wolford, for  
Applicant.

H. P. Merry, for Southern California Freight  
Lines, Inc., and Certificated Highway  
Carriers, Inc., Protestants.

E. L. E. Bissinger, for Southern Pacific  
Company and Pacific Motor Trucking Company,  
as their interests may appear.

CRAEMER, Commissioner:

O P I N I O N

George Brand and H. B. Brand, applicants herein, request a certificate of public convenience and necessity for the establishment and operation of a highway common carrier service between Niland and Calipatria and Los Angeles.

This matter was the subject of a formal hearing at El Centro on November 16, 1939. Briefs having been filed and the matter having been duly submitted, it is now ready for decision.

The service proposed would be limited to the transportation of produce from Niland and vicinity and Calipatria and vicinity via alternate routes to Los Angeles. The application fails to specifically define or describe the particular area to be served and although it proposes to provide service to "intermediate points," there is nothing in the record to indicate whether those

points are intermediate to Niland and Calipatria or whether it is applicants' intention to serve all points between the Imperial Valley and Los Angeles.

Applicants allege that for the past six years, they have conducted service as highway contract carriers under permits from this Commission for the transportation of such produce.

By this Commission's Decision No. 31918, dated April 11, 1939, applicants were ordered to cease and desist their operations as a highway common carrier between Los Angeles and Imperial Valley points, unless and until they have secured a certificate of public convenience and necessity so to do. Applicants now allege that their business is growing to an extent where it is more proper that they operate as common carriers under a certificate of public convenience and necessity than that they continue to operate as contract carriers.

The record shows that Southern California Freight Lines has a certificate from this Commission to operate in this identical territory and transport any and all commodities which those applicants seek authority to transport. Pacific Motor Trucking Company, in conjunction with Southern Pacific Company, likewise provides a service for the transportation of produce between Imperial Valley points and Los Angeles at rates which are the same as those of Southern California Freight Lines.

Applicants propose to establish rates <sup>(1)</sup> of 11¢ per crate on tomatoes, squash, eggplant and grapes in any quantity, whereas the rate of Southern California Freight Lines amounts to approximately 12¢ per crate on any quantity and 11¢ per crate on quantities of 2,000 pounds or over.

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(1) The complete schedule of proposed rates and rules is set forth in Exhibit "A" attached to the application.

Many witnesses, testifying in behalf of applicants, indicated that the service proposed and heretofore rendered by them was superior to that offered by the existing certificated carriers and that, if the Commission saw fit to deny the instant application, they would utilize proprietary trucks rather than give the business to either of the two companies now operating. In all fairness, however, it should be stated that cross-examination of these witnesses developed the fact that many of them had never used and were unfamiliar with the services of the existing carriers and they stated that it was questionable whether or not they would continue to patronize applicants if it became necessary for them to increase their rates. From these statements, we cannot help but feel that many of the patrons of applicants are using applicants' service, in preference to that of the certificated carriers, by reason of the differential in rates.

Applicants request a certificate for the transportation of produce, whereas the rates set forth in Exhibit "A" attached to the application cover certain specific commodities.

Testifying relative to applicants' operations in the past, George Brand, one of the applicants herein, stated that they kept no books and did not know whether or not the organization had made or lost money during any particular season's operations. There was no evidence of any kind submitted, showing possible revenues and operating expense, in support of the contention that the operations, if certificated, could be conducted at a profit, and this same witness freely admitted that he had no idea as to what additional burdens the issuance of a certificate might impose.

The record shows that at present applicants' drivers make a round trip between Imperial Valley and Los Angeles, entailing continuous employment for a period of approximately seventeen hours. Applicants' representative testified that he was unfamiliar with the Commission's General Order No. 93<sup>(2)</sup> and was, therefore, unable to determine what effect compliance with such rules and regulations might have on operating costs. The record further indicates that it is the present practice of these applicants, under their permits as a contract carrier, to back-haul shipments of various types of general freight from Los Angeles to valley points. Should this certificate be granted, this revenue may be lost to applicants, for the reason that no place, either in the prayer of the application or in the evidence adduced at the hearing, is there indication of any desire to do other than transport produce from valley points to the Los Angeles market. Likewise applicants do not propose to transport empty containers on the back-haul, and this is a necessary service to be rendered in conjunction with the transportation of produce as proposed herein.

It may be readily seen that the Commission does not have before it a record containing sufficient information whereby it may determine whether or not the operations proposed by applicants would be a financial success at the rates proposed, or at any other rates. After carefully considering the entire record in this proceeding, it is hereby concluded that applicants have failed to sustain the burden of proof that public convenience and necessity warrant the issuance of a certificate as requested.

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(2) Safety rules and other regulations covering the operation of passenger stage corporations and highway common carriers as such are defined by the Public Utilities Act.

It is recommended that the application be denied without prejudice.

O R D E R

Public hearing having been held and the Commission being fully advised;

IT IS HEREBY ORDERED that the above mentioned application be, and the same is hereby, denied without prejudice.

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

Dated at San Francisco, California, this 6<sup>th</sup> day of February, 1940.

Ray L. Kelley  
Frank J. Miller  
James D. Crauer  
Commissioners.