

ORIGINAL

Decision No. 332132

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
FRANK CAUDANA and MAURICE LOVEY, do-)
ing business as BESONE MOTOR EXPRESS,)
for an order confirming and defining)
operative rights, and for an extension)
of the Bakersfield pickup and delivery)
area, and a lateral right of five miles)
on either side of highways traversed.)

Application No. 23800

GWYN H. BAKER, for Applicants.

DON H. MOORE, for Asbury Transportation Co.,
Interested Party.

BY THE COMMISSION:

O P I N I O N

This is an amended application by Frank Caudana and Maurice Lovey, co-partners doing business under the fictitious name and style of Besone Motor Express, for an order of this Commission clarifying, amplifying, and consolidating their highway common carrier operative rights between Bakersfield, McKittrick, Taft, Maricopa, and all intermediate points, specifically designating the routes thereon and further establishing and authorizing a five (5) mile lateral right on either side of the highways traversed in operating over said routes. In addition, applicants seek authority to extend and enlarge their existing pickup and delivery zone in the city of Bakersfield to include territory beyond the incorporated limits of said city as defined and described in Exhibit "A" attached to the application.

A public hearing in this matter was had in Bakersfield before Examiner McGettigan on Tuesday, January 21, 1941, where

testimony was taken, exhibits filed, the matter submitted, and it is now ready for decision.

(1)
No protestants appeared in this proceeding but an appearance as an interested party was entered by Asbury Transportation Co. (2) E. H. Wolfe, general manager of Besone Motor Express, and Frank Caudana, (3) a co-partner, testified in this proceeding. No other witnesses testified.

Basically, this application is for the purpose of verifying the alleged past and present practices of applicants

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- (1) The following carriers, operating in this field, were notified of the public hearing in this matter: Southern Pacific Company, Railway Express Agency, Inc., Pacific Greyhound Lines, Valley Motor Lines, Inc., Bekins Van Lines, Bakersfield-Wasco Stage Line, Cook Stages, Home Stages, Orange Belt Stages, Inc., Lyon Van Lines, and Asbury Transportation Co.
- (2) Asbury Transportation Co. operates as a carrier of oil well supplies as specifically described with certain lateral rights, among other points between Bakersfield, McKittrick, Fellows, Taft, and Maricopa, subject to the following restrictions:
- (a) Oil well supplies, heavy machinery, pipe, steel and tanks, as hereinafter specifically defined and limited;
 - (b) In truck-load lots, with a minimum weight per load of not less than 4000 pounds, such weight limitation to apply as to the entire trip except in the case of the transportation of oil well supplies when the limitation need apply only at the initiation of the trip;
 - (c) Each load to be limited to shipments from one consignor to one or more consignees, or to shipments from one or more consignors to one consignee;
 - (d) Upon and along the following described routes, with the right to make lateral departures therefrom as herein specifically stated and not otherwise, and subject to the conditions and limitations hereinafter stated.
- (3) Frank Caudana and Emil Bonenso acquired a right from Besone by Decision No. 18352, dated May 14, 1927, on Application No. 13747. Maurice Lovey acquired interest of Bonenso by Decision No. 23481, dated March 19, 1931, on Application No. 17232.

whereby they have been operating between the termini here involved in both directions over and along two main routes, or either or both of them, out of Bakersfield via Greenfield and Taft to and from McKittrick, and via Rio Bravo and Buttonwillow to and from McKittrick resulting in the rendering of a loop service as one unified and continuous operation, including a lateral service three to five miles on either side of the highways traversed.

According to the testimony of Frank Caudana, he originally established this service in 1914 and thereafter operated in the manner above described for approximately three years. In 1917 Joe Besone conducted this service as hereinafter described. He further testified that throughout its subsequent existence, to date, including transfer and extensions of the service, he maintained an active interest in and connection with the business in various capacities, and that of his own knowledge, the loop routing and unified service above described has been consistently followed pursuant to rates and schedules on file with the Railroad Commission since the operation became subject to the jurisdiction of that body on May 1, 1917.

Commission records show that, by Decision No. 5602, dated July 26, 1918, on Application No. 3843, Joe Besone, operating under the name and style of Joe Besone's Service Motor Express, whom the record shows commenced operation about April 20, 1917, was granted a certificate of public convenience and necessity to operate freight and express service between Bakersfield, Taft, and Fellows and intermediate points, but no route was specified. However, a number of points to be served were named, which would indicate that the practical and most direct route would be via Greenfield, Panama, and Old River.

On February 26, 1920, Besone filed an application (No. 5395), seeking to extend his existing operative right between Taft and Maricopa and between Fellows and McKittrick. Decision No. 7784, dated June 24, 1920, purported to grant the application but although the operation was certificated between the points above mentioned and the opinion itself referred to the proposed "extensions" as being "a convenience and necessity," the order is silent as to such authority being an extension of applicants' existing right between Bakersfield, Taft, and Fellows and the right conferred refers only to the fact that "public convenience and necessity require the operation by Joe Besone.... of an automobile freight line between Fellows and McKittrick and intermediate points and Taft and Maricopa and intermediate points." Here again, no specific routes are set forth but, following the original premise as to routes to be followed, practicability would indicate a continuation of the original route extended beyond Taft to Maricopa and beyond Fellows to McKittrick stemming from the Bakersfield, Greenfield, Panama origination.

This omission as to the extended operative rights was recognized by applicant in September of 1922 when he filed Application No. 8241 seeking a "certificate of public convenience and necessity declaring that through service and through rates should be continued by a connection of the two certificates at Taft for Maricopa and at Fellows for McKittrick." The application further stated, in reference to Decision No. 5602 and Decision No. 7784, "that applicant has, since acquiring the operative rights under decisions referred to above, maintained a through route and through rates from Bakersfield to all points served by applicant including all terminals, as evidenced by tariff on file with your Honorable Body."

In its Decision No. 11237, dated November 14, 1922, on said Application No. 8241, the Commission granted Besone a right to operate "a local and through service...between Bakersfield, Taft, Fellows and Maricopa and between Bakersfield, Taft, Fellows and McKittrick" but made no specific order as to consolidating the operative rights nor were routes laid down. In its opinion in the matter, the Commission comments thus:

"It appears from the testimony that applicant has been operating since 1918 between Bakersfield, Taft and Fellows and that by Decision No. 7784 of June 24, 1920, upon Application No. 5395, the record of which was placed in evidence herein, he was granted authority to operate between Fellows and McKittrick on the one hand and between Taft and Maricopa on the other, but the Order did not expressly authorize through operation nor operation of these units as a portion of or an extension of the line originally operated between Bakersfield, Taft and Fellows, although it appears from recitals of the above Opinion, that service between Bakersfield as a distributing and supply point, and the towns in the west side oil fields, including the four above referred to, was needed by the shipping public, it appearing therein that rail service was unsatisfactory."

Aside from the unsupported testimony of Frank Caudana, which stands unrefuted in the record, no evidence was introduced, other than the decisions of the Commission, to substantiate applicants' contention as to its method of operation either as to routes traversed or other conditions of service.

Palpably, however, the intention of the operator as well as that of the Commission based upon a perusal of both the applications and decisions of record, was to effect a consolidated and unified system of operation. This is further substantiated by the nature of the territory involved which is tributary to and dependent upon Bakersfield as both a source of supply and as a point of distribution. Expedited service and economical operating practices both dictate the advisability and soundness of

conducting this service as one unit rather than in segments.

With respect to the off-line service authority sought by applicants for a five-mile lateral right, there is nothing in the record except the testimony of applicant Caudana to support their contention that lateral rights were ever sought, exercised by or granted to Besone Motor Express. Neither tariff nor time schedule filings refer to the existence, either implied or actual, of such rights. The witness Caudana, however, unequivocally stated that such a service up to three miles had always been rendered along the line of operation here involved. This witness further stated that the principal service rendered was on general merchandise and oil in barrels delivered to stores and farms located in the territory adjacent to and on the highways traversed. Based upon the record before us, however, no specific authority exists for the rendition of this three-mile lateral service.

The fact exists, however, that Besone Motor Express is the only highway common carrier in this territory with authority to transport general freight. It further appears that if this carrier is compelled to restrict his service, or had restricted it, to points upon the highways traversed, a considerable portion of the public living upon farms and in small communities located off the main traveled routes within the three-mile lateral zone would be deprived of an essential service which they have had for many years and upon which they have come to depend.

In the matter of the applicants' request for authority to serve additional territory in and about Bakersfield as a pickup

(4)
and delivery zone, it appears from the testimony of the witness Wolfe, general manager of Besone Motor Express, that there has been a considerable expansion and development of an industrial area within the territorial limits immediately adjacent to Bakersfield. Likewise, apparent community development has resulted in an increase in population of approximately 10,000 persons in and about the city. As a result of a considerable and increasing number of requests for service, applicants now seek the authority referred to in this district which they allege encompasses territory recently designated by the Interstate Commerce Commission as the Bakersfield Metropolitan Area.

With respect to the Asbury Transportation Co., which is the only other highway common carrier operating in this section, it does not appear that it is authorized to render a service comparable to that of applicants and, furthermore, consideration of the proposal here will be limited to authority co-extensive with applicants' past practices and as so limited, disposes of any adverse effect to said Asbury Transportation Co.

Full consideration of this record warrants the clarifying, amplifying and consolidating of the operative rights of Besone Motor Express as herein sought, including the right to perform service in and about the city of Bakersfield as described

(4) The proposed pickup and delivery zone is more extensive than that provided in outstanding minimum rate orders. Counsel for applicants stated, however, that they would establish rates conforming with the prescribed minimum rates in the event the application were granted.

(5)
in Exhibit "A," attached to the application, except that a lateral right of three (3) rather than five (5) miles appears justifiable. It further appears that this authority may best be established by the issuance of a certificate de novo in lieu of the existing certificates. The denial of applicants' request

- (5) Exhibit "A" - "Pickup and Delivery Limits at Bakersfield include the following area:

"All points located within the following described boundary:

"Beginning at the intersection of Cottonwood Road and Casa Loma Drive; thence northerly along Cottonwood Road and Lakeview Avenue to Virginia Avenue; easterly along Virginia Avenue to Fairfax Road; northerly along Fairfax Road to Pioneer Drive; westerly along Pioneer Drive to Sterling Road; northerly along Sterling Road to Niles Street, westerly along Niles Street to Oswell Street; northerly along Oswell Street and its prolongation for a distance of one-half mile; westerly therefrom along an imaginary line for a distance of one-half mile; northerly therefrom along an imaginary line for a distance of one-quarter mile; westerly therefrom along an imaginary line to its intersection with River Boulevard; northerly along River Boulevard to Panorama Drive - China Grade; southwesterly along Panorama Drive - China Grade to Union Avenue; southerly along Union Avenue to 34th Street; westerly along 34th Street to 'O' Street; thence northerly along 'O' Street to 44th Street; westerly along 44th Street to the Kern River Bridge; northerly across the Kern River Bridge to Roberts Lane; easterly along Roberts Lane and Ramona Avenue to the west bank of the Kern River; northeasterly along the west bank of the Kern River for a distance of one-half mile; northerly along an imaginary line for a distance of one-quarter mile; easterly along an imaginary line for a distance of one-quarter mile; northerly therefrom along an imaginary line for a distance of one-quarter mile to China Grade Road; westerly along China Grade Road to Olympic Drive; northerly along Olympic Drive to Brighton Way; westerly along Brighton Way to North Chester Avenue; southerly along North Chester Avenue to Douglas Street; westerly along Douglas Street for a distance of one mile; southerly along an imaginary line to old U. S. Highway No. 99; southeasterly along said highway to Beardsley School; southwesterly from Beardsley School to Golden State Highway; northwesterly along Golden State Highway to right-of-way of the A.T. & S.F. Ry.; returning along the Golden State Highway to Pierce Road; southerly along Pierce Road to Shell Street; westerly along Shell Street to Calloway Canal; southerly along an imaginary line to Rosedale Highway; westerly along Rosedale Highway to Underwood Road; southerly along Underwood Road to Stockdale Highway; easterly along Stockdale Highway to Stine Road, southerly along Stine Road to Ming Avenue; easterly along Ming Avenue, Wayside Drive and Casa Loma Drive to point of beginning."

for a five-mile lateral right is based upon the fact that applicant failed in this record to justify such authority. The following order will so provide.

Frank Caudana and Maurice Lovey, doing business as Besone Motor Express, 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

Public hearing having been had in the above-entitled proceeding, evidence having been received, the matter having been duly submitted, the Commission now being fully advised in the premises, and it being found as a fact that public convenience and necessity so require;

IT IS ORDERED that a certificate de novo be and it hereby is granted to Frank Caudana and Maurice Lovey, co-partners, doing business under the name and style of Besone Motor Express, for the establishment and operation of an automotive service as a highway common carrier, as such is defined in section 2-3/4 of the Public Utilities Act, between Bakersfield (including the territory heretofore referred to and described in Exhibit "A" of the application), Taft, Fellows, McKittrick, Maricopa and all intermediate points, including Buttonwillow, Rio Bravo, Panama and Old River, and laterally within a zone extending three (3) miles on

each side of the highways hereinafter designated to be traversed, as a single consolidated and unified system, in lieu of their existing operative rights as authorized, acquired, or amended by Decisions Nos. 5602, dated July 26, 1918, 7784, dated June 24, 1920, 11237, dated November 14, 1922, 18352, dated May 14, 1927, and 23481, dated March 19, 1931, on Applications Nos. 3843, 5395, 8241, 13747, and 17232, respectively.

IT IS FURTHER ORDERED that, in the operation of said highway common carrier service pursuant to the foregoing certificate, Frank Caudana and Maurice Lovey shall comply with and observe the following service regulations:

1. Applicants shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.
2. Subject to the authority of this Commission to change or modify such at any time by further order, Frank Caudana and Maurice Lovey shall conduct their highway common carrier operations over and along State Routes Nos. 399, 178 and 33 and such other highways, roads and streets between the points, herein authorized to be served, as may reasonably be proper and necessary for adequately performing the service herein authorized.
3. 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.
4. Applicants shall file, in triplicate, 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.

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 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.
7. 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.

IT IS FURTHER ORDERED that Decisions Nos. 5602, 7784, 11237, 18352, and 23481 be and they hereby are revoked and annulled.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at ^{Los Angeles}~~San Francisco~~, California, this 18th day of February, 1941.

[Signature]
[Signature]
Ray & Riley
Justin J. Caamen
Francis L. Haveman
COMMISSIONERS