

Decision No. 37249

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of J. E. MILLER, doing business as M & M TRANSFER COMPANY, to sell and J. A. CLARK DRAYING COMPANY, LTD., a corporation, to purchase highway common carrier rights between the city of Torrance, on the one hand, and portions of the city of Los Angeles and the county of Los Angeles, on the other hand, or, in the alternative,

the Application of J. A. CLARK DRAYING COMPANY, LTD., a corporation, for a certificate of public convenience and necessity to operate motor vehicles in store-door pickup and delivery service for The Atchison, Topeka and Santa Fe Railway Company between said points.

ORIGINAL

Application No. 26158

BY THE COMMISSION:

O P I N I O N

In this proceeding an order is sought (1) authorizing the transfer of an operative right as a highway common carrier by J. E. Miller, doing business as M & M Transfer Company, to J. A. Clark Draying Company, Ltd., or (2) in the alternative, (in the event the Commission should find that such operation has been abandoned) granting a certificate direct to Clark authorizing an operation identical to the service which Miller had conducted.

By Decision No. 36362, rendered May 18, 1943, in Application No. 25521, Miller was authorized to provide a highway common carrier service between Torrance and adjacent areas situated in Los Angeles County and in the city of Los Angeles, included

(1) For brevity, J. E. Clark Draying Company, Ltd. will be referred to hereafter as Clark.

within the pickup and delivery zone of Torrance, as shown in the published tariffs of The Atchison, Topeka and Santa Fe Railway Company. Under this certificate, Miller, who had been engaged exclusively in performing a pickup and delivery service for the Santa Fe at Torrance, was permitted to extend that service to war production industries located within the territory described.

It is alleged that Miller has cancelled his contract with the Santa Fe, and has undertaken to transfer the operative right to Clark in consideration of the payment of the agreed purchase price of one dollar. The continuation of this service, it appears, would be in the public interest; and Clark, an experienced operator, is qualified to conduct it. However, information submitted to the Commission discloses that Miller has sold his equipment, and has discontinued the service without obtaining authority to do so; consequently, permission to transfer the operative right, previously granted to him, will be denied. Instead a new certificate will be issued to Clark authorizing the establishment of a service identical to that previously conducted by Miller. Other carriers serving the territory have advised the Commission that they do not object to the granting of the application. This is not a matter requiring a public hearing.

J. A. Clark Draying Company, Ltd. is hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate-fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. 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

Application having been made as above entitled; and the Commission now finding that public convenience and necessity so require,

IT IS ORDERED as follows:

(1) That the application herein, to the extent that it seeks authority for the transfer by J. E. Miller, doing business as M & M Transfer Company, to J. A. Clark Draying Company, Ltd. of the certificate of public convenience and necessity granted to Miller by Decision No. 36362, be and it hereby is denied.

(2) That a certificate of public convenience and necessity be and it hereby is granted to J. A. Clark Draying Company, Ltd., a corporation, authorizing the establishment and operation of a service as a highway common carrier, as defined by Section 2-3/4, Public Utilities Act, between the City of Torrance, on the one hand, and those portions of the city of Los Angeles, and of the county of Los Angeles, respectively, hereinafter described, on the other hand, both of the latter areas being included within the pickup and delivery zone of Torrance, as shown in the published tariffs of The Atchison, Topeka and Santa Fe Railway Company; and authorizing the performance of store-door pickup and delivery service within the city limits of Torrance, and within said areas, and each of them. Said areas, which are contiguous and which, collectively, adjoin the easterly boundaries of the city of Torrance, are described as follows:

- (a) That certain area, situated within the city of Los Angeles, bounded on the north by 190th Street; on the south by 220th Street; on the west by Western Avenue; and on the east by Normandy Avenue.
- (b) That certain area situated in the county of Los Angeles, bounded on the north by 190th Street; on the south by James Street; on the west by Normandy Avenue; and on the east by Figueroa and Hamilton Streets.

Said certificate is granted subject to the following limitations:

- (A) Any pickup and delivery service performed by applicant within the territory hereinabove described shall be conducted only under joint rates to be established between applicant and The Atchison, Topeka and Santa Fe Railway Company.
- (B) Applicant's service shall be limited to the transportation of shipments received from, or which may be delivered to The Atchison, Topeka and Santa Fe Railway Company, and which shall receive, in addition to the highway carrier movement by applicant, an immediately prior or subsequent movement over the rail facilities of The Atchison, Topeka and Santa Fe Railway Company.

(3) That in the operation of said highway common carrier service, applicant shall comply with and observe the following service regulations:

1. Applicant 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. Applicant shall comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, tariffs and time schedules satisfactory to the Commission within sixty (60) days from the effective date hereof and on not less than one (1) day's notice to the Commission and the public.

3. Subject to the authority of this Commission to change or modify them at any time by further order applicant shall conduct said highway common carrier operations over and along the following routes:

Over any and all streets and highways, available for motor vehicle operation, between the points herein authorized to be served.

The effective date of this order shall be the date hereof

Dated at San Francisco, California, this 8th
day of August 1944.

Richard Lachse
Justus F. Calver
Frank R. Havener
George W. Brown
W. H. Powell
COMMISSIONERS