

Decision No. 41148**CONFIDENTIAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
LAWRENCE KENNEDY, trustee of the
Estate of HARRY WELBER HENDRIX, a
bankrupt, to sell and convey and of
COAST LINE TRUCK SERVICE, INC., to
purchase and acquire the certificate
of public convenience and necessity
herein described.

Application No. 28483

Investigation of highway common carrier
operations of H. W. HENDRIX, and of
LAWRENCE KENNEDY, trustee in bankruptcy
of HARRY WELBER HENDRIX, between Los
Angeles and certain Imperial Valley
points.

Case No. 4910

In the Matter of the Application of
HENDRIX TRUCK COMPANY, for a certificate
of public convenience and necessity.
Petition of SOUTHERN CALIFORNIA FREIGHT
LINES and PACIFIC FREIGHT LINES for
revocation of certificate of public con-
venience and necessity granted by Deci-
sion No. 30498.

Petition in
Application No. 20725

Reginald L. Vaughan and Varnum Paul, by Varnum Paul for
applicants in Application No. 28483; Bert M. Green for Lawrence
Kennedy, Trustee in Bankruptcy, in Application No. 28483; H. J.
Bischoff, H. P. Merry, and W. A. Steiger for Southern California
Freight Lines and Pacific Freight Lines in Application No. 20725,
as protestants in Application No. 28483, and interested parties
in Case No. 4910; Gordon & Knapp, by Wyman Knapp and Sanford A.
Waugh, for Pacific Freight Lines and Pacific Freight Lines Express,
protestants in Application No. 28483, and interested parties in
Case No. 4910; James J. Broz for Imperial Truck Lines, interested
party.

O P I N I O N

In Application No. 28483, Lawrence Kennedy, as trustee
of the Estate of Harry Welber Hendrix, bankrupt, seeks authority

of this Commission to sell and transfer to Coast Line Truck Service, Inc., a corporation, the highway common carrier operative rights originally granted by Decision No. 30498, dated January 3, 1938, in Application No. 20725, and Coast Line Truck Service, Inc., seeks permission to purchase said rights.

Southern California Freight Lines and Pacific Freight Lines, petitioners in Application No. 20725, pray that this Commission enter its order revoking and canceling the certificate of public convenience and necessity granted by Decision No. 30498 upon the grounds of abandonment and discontinuance of highway common carrier service.

In Case No. 4910 this Commission ordered an investigation on its own motion for the purpose of determining whether there has been an unauthorized discontinuance or abandonment of service; and for the further purpose of determining whether the certificate of public convenience and necessity issued by Decision No. 30498, in Application No. 20725, and acquired by H. W. Hendrix pursuant to Decision No. 34787 in Application No. 24553, should be revoked and annulled because of unauthorized discontinuance or abandonment of service.

Public hearings were held in Los Angeles before Commissioner Potter and Examiner Chiesa, on October 29, 1947, and before Examiner Chiesa on December 1, 1947. Evidence, oral and documentary, having been adduced, the matters were submitted for decision.

The operative right herein sought to be transferred was created by Decision No. 30498 and authorized H. M. Hendrix and H. W. Hendrix, copartners, to establish and operate an automotive

service as a highway common carrier, seasonally, from approximately November 1 of each year to approximately August 1 of the succeeding year, for the transportation of

"(a) Hay, straw, grain, fresh fruits, fresh vegetables, edible nuts, fresh or dried beans, and fresh or dried peas from the Imperial Valley points of Calexico, Heber, Holtville, Sandia, Brawley, El Centro, Imperial, Seeley, Mt. Signal, Westmoreland, Calipatria and Niland and an area within a radius of fifteen miles from each of said points, on the one hand, to Los Angeles, on the other hand, and

"(b) Box shock, empty crates or boxes, fertilizer, insecticides, and seeds from Los Angeles, on the one hand, to farms only located within the area referred to in paragraph (a), on the other hand,

via U. S. Highway No. 99, and subject to the restriction that no transportation service may be performed by applicants from or to Los Angeles and farms and shipping points in the Imperial Valley served by Southern California Freight Lines under authority of Decision No. 29315, in Application No. 19675, dated November 30, 1936."

The area described in paragraph (a) of said Order includes practically all of Imperial Valley. The restricted area is a comparatively small zone along State Highway No. 111 north of Calipatria.

Harry Welber Hendrix, bankrupt, whose certificate of public convenience and necessity is sought to be transferred in Application No. 28483, is the same person as H. W. Hendrix, one of the partners, to whom the operative right was originally issued. Said operative right was subsequently transferred, by authority of this Commission, to Hendrix Truck Corporation, on January 31, 1938 (Decision No. 30570); to Produce Express, a corporation, on February 18, 1941 (Decision No. 33918); and, to H. W. Hendrix on November 25, 1941 (Decision No. 34789).

Other than said transfers of ownership no change has been authorized in nature and extent of the highway common carrier service originally authorized.

The need for the service authorized in Decision No. 30498, in Application No. 20725, and the extent to which applicant had proposed to provide same is shown by the following quotations taken from this Commission's Opinion in said proceeding:

"Extending from Niland southerly to the Mexican Border, and from Seeley and the southeastern end of Salton Sea on the west to Holtville and the irrigation canal on the east--a territory roughly forty miles long and twenty miles wide--the Imperial Valley embraces an area of approximately 1000 square miles. In this valley are situated hundreds of farms and ranches, ranging in size from a few acres to 1000 acres or more. Its products, for the most part, are of a highly perishable nature, including lettuce, cantaloupe, peas, asparagus, tomatoes, squash, and watermelons, as well as hay and grain.

"Throughout the period of crop maturity, which commences as early as November 1 and extends approximately to July 20 of the succeeding year, many seasonal peaks occur, which require substantial increases in the transportation facilities needed to move these products. Due to the extremely perishable nature of the great bulk of these commodities and to the necessity, now grown to be a custom of the trade, for delivering them to market no later than midnight of the day of shipment, the need for an expedited and highly flexible transportation service has become imperative."

* * *

"To serve this territory adequately, it is necessary that pickup trucks be employed to gather the produce from the fields and farms and transport it to various terminal points, where it is transferred to line-haul trucks and brought to the marketing centers. From the record it appears that the bulk of the produce moving from the Imperial Valley, aside from interstate shipments moving east by rail (of which there is a heavy volume), is destined to the Los Angeles commission houses; only a small percentage is transported to San Diego.

"Applicant Harry W. Hendrix, testifying on his own behalf, stated that, in partnership with H. M. Hendrix, he had been engaged since 1930 in the business of transporting products between Imperial Valley points and Los Angeles, and that for some fifteen years he had been in the transportation business. He testified that applicants propose to operate two ten-ton, five six-ton, one four-ton, and one two-ton truck. They are able, so he stated, to provide additional equipment as the needs of traffic may require. They will maintain permanent terminals at Brawley and El Centro, seasonal terminals at Calexico, Niland, and Westmoreland, and will provide pickup trucks at Niland, Brawley, Holtville, Westmoreland, and El Centro.

"As shown by amended Exhibit 'B' (the time schedule), applicants propose to leave Los Angeles at 9:00 P.M. daily, arriving at Westmoreland at 3:00 A.M., Brawley 3:30 A.M., El Centro 4:00 A.M., Calexico 4:30 A.M., Holtville 4: A.M., and Niland at 5:00 A.M. Arrival times at Westmoreland, Calexico, Holtville, and Niland will depend upon whether there is any freight from Los Angeles destined to these points. Applicants propose to leave El Centro and Brawley at 5:00 P.M. and 6:00 P.M., respectively, arriving in Los Angeles at 1:00 A.M. They propose a pickup service to be maintained either from El Centro or from Brawley to all Imperial Valley points except while seasonal terminals are maintained in Westmoreland, Calexico, Holtville, and Niland, when pickup service will be maintained from the nearest terminal. While the seasonal terminals are open, the following minimum time schedule will be maintained, viz., leaving Calexico, Holtville, and Niland at 12:00 noon, leaving El Centro at 12:30 P.M., Brawley at 1:30 P.M., and Westmoreland at 2:00 P.M., and arriving in Los Angeles at 9:00 P.M. They also propose to dispatch trucks, if needed, from these Imperial Valley points, every half-hour or oftener, maintaining a seven-hour schedule between Westmoreland and Los Angeles. If no load is available, the trucks will return empty to the valley." (emphasis added)

The evidence of record in this proceeding shows, and we find, that H. W. Hendrix was declared a bankrupt in December, 1946, that Lawrence Kennedy was appointed trustee in bankruptcy of the Estate of H. W. Hendrix, in February, 1947; that Wm. A. McGugin, Referee in Bankruptcy, on April 21, 1947, confirmed the sale of

the certificate of public convenience and necessity granted by this Commission in Decision No. 30498, dated January 3, 1938, to Coast Line Truck Service, Inc., a California corporation, for the sum of five hundred dollars (\$500), subject to the condition that the Public Utilities Commission grant an order approving the transfer to the purchaser thereof.

We also find, upon the evidence of record, that H. W. Hendrix has been the sole owner of the said operative right from November 25, 1941, to date; that said H. W. Hendrix did not, during the seasons of 1943-44, 1944-45, and 1945-46, establish, operate, or maintain an office or permanent terminal at El Centro, nor did he, during said seasons, establish or maintain any office, temporary terminal, or place of business for the purpose of conducting a highway common carrier operation at Calexico, Niland, and Westmoreland, nor were any pickup trucks provided at Niland, Holtville, Westmoreland, and El Centro as was proposed.

Evidence, oral and documentary (Exhibit No. 1), offered by a Commission rate expert, shows, and we find, that H. W. Hendrix, doing business as Associated Freight System, transported, in the seasonal year November 1, 1943, to July 31, 1944, 52 shipments of vegetables, from Brawley to Los Angeles, having an aggregate weight of approximately 34,281 pounds for which he received revenue in the amount of \$186. In the season of 1944-45, 175 shipments of vegetables, weighing approximately 111,479 pounds were carried, all from Brawley to Los Angeles, except two from Westmoreland, one from El Centro, and one from Imperial, for which service \$574.11 was received. In the 1945-46 season 26 shipments of vegetables, weighing 29,491 pounds, were carried for a revenue of

\$138.24. The latter shipments were from Brawley to Los Angeles, excepting one from Westmoreland to Los Angeles. During the said three seasons no shipments were carried from Los Angeles to Imperial Valley.

Although Hendrix was of the opinion that his business was in excess of that shown by the Commission witness, no evidence in support of his claim was presented other than Hendrix's testimony in a prior proceeding, in Application No. 26879, wherein Hendrix had requested authority to sell his operative right. Hendrix then testified that his 1943-44 and 1944-45 revenues were \$325.09 and \$732.00, respectively. It may be seen that this is not a material increase over the figures in Exhibit No. 1, which were derived from Hendrix's records that were made available to this Commission by Hendrix, his attorney, or the trustee.

The record shows clearly that the operator in this case failed to render the service required by the certificate of public convenience and necessity issued to him. In the matter of the Application of J. R. Martin and Adam A. Moore, for permission to transfer operative rights, Decision No. 16783, 28 CRC 210, we stated that

"An operative right is to be regarded as a distinct entity and as such is indivisible. In granting a certificate the Commission acts upon evidence showing the necessity for service to be conducted over the entire route, as distinguished from its constituent parts; consequently, the obligation rests upon an operator to give continuous and adequate service over the whole route embraced within his certificate until he has been authorized by the Commission to discontinue service over such route or a part of it."
(emphasis added)

The small part of the certificated area served and the negligible amount of business transacted by this operator leaves

no doubt that he had abandoned service over the major portion of the territory embraced within the certificate.

Again quoting from the Opinion in Decision No. 16783:

"We have repeatedly held that where an operator wilfully and without our consent abandons the operation of an automobile stage or truck service, his rights are subject to forfeiture and his certificate may be revoked (In re De Luxe Transportation Co., Decision No. 6933, 17 R. R. C. 565; Nelson et al., vs. Haley et al., Decision No. 10098, 21 R. R. C. 226; In re M. Haydis, Decision No. 11555, 22 R. R. C. 944; In re Monzie, Decision No. 11103, 22 R. R. C. 412)"

"Since a certificate is indivisible the same penalty may be imposed for the unauthorized abandonment of a substantial part of an operative right (In re California Transit Co., Decision No. 10073, 21 R. R. C. 211, 215)."

Upon full consideration of the evidence we find as a fact that H. W. Hendrix has, without the consent of this Commission, abandoned the operative right heretofore transferred to him by Decision No. 34787, dated November 25, 1941. Therefore, Application No. 28483 will be denied.

On June 4, 1947, Southern California Freight Lines and Pacific Freight Lines filed a joint petition in Application No. 20725 in which they allege that Harry W. Hendrix had abandoned operations authorized by Decision No. 30498 and request the Commission to revoke the operative rights created by said decision. As the same issue thus raised is being disposed of in the matter of the Commission's Order of Investigation (Cs. No. 4910) this petition will be dismissed.

ORDER

A public hearing having been held in the above-entitled proceeding, evidence having been offered, the matters having been

duly submitted and the Commission being fully advised in the premises.

IT IS ORDERED:

(1) That Application No. 28483, of Lawrence Kennedy, trustee of the Estate of Harry Welber Hendrix, a bankrupt, to sell and convey, and of Coast Line Truck Service, Inc., to purchase and acquire, the certificate of public convenience and necessity granted by Decision No. 30498, dated January 3, 1938, be, and the same hereby is, denied.

(2) That the certificate of public convenience and necessity granted in Decision No. 30498, dated January 3, 1938, in Application No. 20725, and subsequently transferred to H. W. Hendrix by Decision No. 34787, dated November 25, 1941, in Application No. 24553, be, and the same hereby is, revoked and annulled.

(3) That the joint petition of Southern California Freight Lines and Pacific Freight Lines filed June 4, 1947, in Application No. 20725 is hereby dismissed.

(4) That the Secretary of this Commission be, and he hereby is, directed to serve, or cause to be served, by registered mail, upon H. W. Hendrix, a certified copy of this Order.

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

Dated at San Francisco, California, this 19th day of January, 1948.

R. J. [Signature]
Justus F. [Signature]
[Signature]
[Signature]
[Signature]
COMMISSIONERS