

ORIGINAL

Decision No. 41589

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
HART N. COOK for a certificate of)
public convenience and necessity to)
operate as a highway common carrier)
between Stockton and Modesto, on the)
one hand, and Pinecrest, Jackson and)
certain intermediate points, on the)
other.)

Application No. 28683

In the Matter of the Application of)
G. W. SUNDBORG, for removal of limi-))
tations in his operative rights)
between Sonora on the one hand and)
Pinecrest on the other hand.)

Application No. 29217

Application No. 28683

Spurgeon Avakian for applicant.
Douglas Fookman for Sierra Railroad Company, and G. W. Sundborg
in propria persona, protestants.
J. C. Sommers for Stockton Chamber of Commerce, interested party.

Application No. 29217

Robert S. Crossland for applicant.
Spurgeon Avakian for Hart N. Cook, protestant.

O P I N I O N

By his application, as amended (Application No. 28683),
Hart N. Cook seeks a certificate of public convenience and necessity
authorizing operations as a highway common carrier for the transpor-
tation of property other than lumber, livestock and household goods
(1) between Modesto, on the one hand, and Knights Ferry, Jamestown,
Sonora, Standard, Tuolumne, Soulsbyville, Strawberry, Pinecrest and
intermediate points, on the other hand, and (2) between all inter-
mediate points between Knights Ferry and Pinecrest, inclusive.

By Application No. 29217, G. W. Sundborg, doing business
as Sundborg Freight Line, seeks an order removing certain seasonal

and weight restrictions contained in a certificate of public convenience and necessity granted by Decision No. 20573, dated December 13, 1928, in Application No. 14785, authorizing him to operate as a common carrier of freight between Sonora and Pinecrest and intermediate points.

Public hearings in Application No. 28683 were held before Examiner Bradshaw at Stockton, Modesto and Sonora. A public hearing was had in Application No. 29217 before Commissioner Potter and Examiner Bradshaw at Sonora. Inasmuch as both applications present for consideration questions concerning operations for the transportation of certain local traffic between Sonora and Pinecrest and intermediate points, the two proceedings will be disposed of in a single opinion and order.

Application No. 28683

Cook proposes to operate a daily service throughout the year. If granted common carrier operating rights, he also contemplates taking steps to establish through rates with connecting carriers at Modesto. Shipments from consignors in Modesto are to be picked up before 5:00 p.m. Freight from other points of origin, such as in the San Francisco Bay area, would be picked up each night at the several carriers' depots. It is proposed to accomplish deliveries at the various points to be served during the following morning.

This applicant testified that the communities along the proposed route have no direct common carrier service from Modesto or the San Francisco Bay area. Although shipments destined to Sonora, Standard and Tuolumne may be tendered to Southern Pacific Company, it is alleged that the service involves a transfer to the Sierra

Railroad Company at Oakdale. A common carrier operation is conducted by G. W. Sundborg (the applicant in Application No. 29217) between Sonora and Pinecrest under a limited seasonal certificate.

According to the testimony, Cook has received numerous requests to transport shipments between the points involved. A number of contracts with shippers and consignees have been entered into since April, 1943, at which time he purchased his present trucking business from another operator. It is contended that contract carrier operations do not adequately meet transportation demands.

Several shippers at Modesto testified in support of the proposed common carrier service. It appears that Cook's service as a contract carrier has been satisfactory to shippers having contracts with him, but they claim that they are prevented from using the service for shipments on which they desire that the charges be collected at destination. A number of shippers who do not have contracts with this applicant testified that they desired to avail themselves of the proposed service. They contended that their business along the proposed route can be expanded if a direct common carrier service is established.

The secretary-manager of the Modesto Chamber of Commerce testified that that organization's board of directors adopted a resolution in support of the application. He stated that the following reasons, among others, prompted the Board's action:

- (1) The absence of direct common carrier service to the territory involved.
- (2) Shippers are hampered in distributing into the area.

- (3) Wholesalers are at a competitive disadvantage with those located at Stockton due to the difference in available service.
- (4) The establishment of the proposed service would increase the volume of business from Modesto to points along the proposed route.

The agent of Valley Express Co. at Modesto gave testimony indicating that that carrier receives numerous shipments from points, such as San Francisco and Oakland, destined to communities along the proposed route; that there is no common carrier at Modesto to which such shipments can be delivered; and that, unless the shipper or consignee has a contract with Cook, it is necessary to re-forward shipments to Stockton for transportation beyond by the Sierra Railroad Company, thus resulting in delays.

A number of operators of summer and winter resorts east of Sonora testified that the present common carrier service is unsatisfactory, principally due to delays encountered in reshipping at Sonora; that a direct common carrier service from Modesto throughout the year would be very advantageous; and that to the extent that they had patronized Cook as a contract carrier his service had been found to be very reliable.

An automobile parts dealer in Sonora claimed that the present service accorded shipments from the San Francisco Bay area is unsatisfactory due to the elapsed time they are in transit, but that the service rendered by Sundborg from Sonora to Pinecrest and intermediate points has been satisfactory for transporting small packages. Two shippers at Sonora, one engaged in selling beverages and the other shipping milk and ice, asserted that the proposed service to Pinecrest and intermediate points would be very desirable in effecting prompt deliveries on days that their own trucks are not

operated. Another shipper, dealing in ice, frozen foods and meat at Sonora, stated that the proposed service to points located east of Sonora is necessary, largely because the existing common carrier does not operate a closed truck, such as applicant Cook proposes to use. Cook testified that in his present operations he transported from Sonora to points east thereof during January and June, 1947, — claimed to be typical winter and summer months — 4,100 and 10,519 pounds of freight, respectively.

G. W. Sundborg, the applicant in Application No. 29217, protested the granting of the application insofar as authority is sought to transport local shipments between Sonora and Pinecrest and intermediate points. ⁽¹⁾ The certificate of public convenience and necessity under which he operates between these points authorizes operations "from June 1st to October 1st, approximately," of each year, subject to the condition that he "shall carry no single package weighing less than 100 pounds from any one consignor to any one consignee."

Protestant stated that he renders a daily service and, when shipments are tendered, also operates during months other than those specified in his certificate. He testified that, with the exception of one occasion during the war when he had difficulty in obtaining repair parts, he has at all times transported in an expeditious manner freight of every description offered, even though consisting of single packages weighing less than 100 pounds. Six witnesses who ship or receive freight which moves between the points in question testified that Sundborg has performed considerable hauling for them; that his service has always been satisfactory and dependable; and that they require the continuance of the type of service he is rendering.

(1) Sierra Railroad Company also appeared as a protestant but withdrew its opposition following the filing of an amendment to the application eliminating a proposal to operate between Stockton and Sonora.

Application No. 29217

As hereinabove stated, the certificate of public convenience and necessity granted to Sundborg in 1928 restricted operations to the period from June 1st to October 1st, approximately, of each year and provided that no single package weighing less than 100 pounds shall be transported from any one consignor to any one consignee. The removal of these restrictions is sought as the means of securing operative rights which will be in conformity with the operations this applicant has conducted between Sonora and Pinecrest and intermediate points in the past.

Sundborg testified that operations were commenced in 1921 and that in 1928 he filed an application for and obtained a certificate of public convenience and necessity. He claims that as the roads were not then open during the winter the purpose of the seasonal restriction was to protect him from being required to operate during periods other than the summer season. The witness declared that he had been of the opinion that the restriction did not preclude any off-season operations in which he might desire to engage.

Applicant also testified that the weight restriction was agreed to, because he did not desire to interfere with the business then conducted by one C. F. Whipple who operated a stage line between Sonora and Pinecrest and in connection therewith transported small packages. He stated that it had been his belief that this restriction was no longer in effect because Whipple and a person to whom his operative right was transferred discontinued operations a number of years ago.

As a further explanation for not observing the limitations imposed by his certificate, applicant asserts that the attorney who

represented him in the prior proceedings is now deceased; that he has never been able to obtain such of his papers, including a copy of the certificate, as were in the attorney's possession; and that he has not seen a copy of his certificate for many years.

In addition to his freight operations, this applicant transports under contract United States mail in the same general territory. During four months of the year commencing in June he picks up mail along his route, leaving Pinecrest about 7:00 a.m. and arriving at Sonora between 8:00 and 9:00 in the morning. In doing so, he also receives orders for various supplies to be shipped from Sonora. Upon his arrival at Sonora the orders are delivered to business houses by his wife or son. After the mail for points along the route is loaded on his truck, Sundborg picks up the shipments covered by the orders brought in earlier in the morning and departs from Sonora for Pinecrest and intermediate points between 11:00 a.m. and 12:00 noon. During the balance of the year he does not make the morning trip to Sonora, but leaves that point about 11:00 a.m., operating daily as far as Long Barn and to Pinecrest if shipments are offered. Shipments are picked up in Sonora pursuant to telephone requests received between 9:00 a.m. and 10:00 a.m.

Applicant contends that he performs a necessary transportation service; that he accepted his present mail contract at a reduced rate of compensation on the belief that he possessed unrestricted common carrier operating rights; and that any loss of revenue, due to the discontinuance of either (a) the hauling of single packages weighing less than 100 pounds or (b) operations during months other than June through September, would jeopardize his ability to continue in business.

A summary of applicant's results of operations during the years 1940 to 1947, inclusive, as indicated by his annual reports, appears in the following tabulation:

Year	Freight Revenue	Mail Revenue	Total Revenues	Expenses (a)	Income
1940	\$ 654.87	\$ 1,575.00	\$ 2,229.87	\$ 957.40	\$ 1,272.47
1941	443.33	1,575.00	2,018.33	693.90	1,324.43
1942	920.76	2,260.09	3,180.85	1,232.69	1,948.16
1943	1,106.05	2,720.44	3,826.49	1,397.79	2,428.70
1944	1,038.69	2,720.45	3,759.14	1,714.37	2,044.77
1945	1,793.51	2,720.00	4,513.51	1,668.33	2,845.18
1946 (b)	1,961.80		1,961.80	1,826.82	134.98
1947 (b)	2,959.39		2,959.39	1,827.32	1,132.07

(a)-Expenses do not include amounts for salaries or labor, except during 1942, 1943 and 1946 when labor or office charges not exceeding \$80.00 were included.

(b) Mail revenue, which now amounts to about \$2,400.00 per year, not reported. Expenses include both freight and mail operations.

According to a balance sheet attached to the application, applicant's assets consisting of cash (\$220.51), depreciated carrier operating property (\$2,619.30) and a residence (\$5,000.00) amount to \$7,837.81. Liabilities consisting of accrued taxes (\$17.05) and equipment obligations (\$724.32) are reported as amounting to \$741.37.

The chairman of the Industrial Committee, Tuolumne County Chamber of Commerce, presented testimony on behalf of applicant. He stated that many members of his organization ship between Sonora and Pinecrest and intermediate points, have used Sundborg's service and so far as he has been able to ascertain found the service to be satisfactory. The witness also testified that from his own experience in patronizing this applicant since 1923 the service has always been satisfactory. While most of the shipments move during the summer, it was asserted that applicant's service is necessary at other periods of the year; and that it is desired to have available throughout the year the same carrier for the handling of shipments weighing less

than 100 pounds as well as those of greater weight. Sundborg's service was characterized as a "personal" service which no one else is prepared to undertake.

Four shippers at Sonora declared that applicant's service has been satisfactory and is necessary throughout the year as well as for small shipments. Two of these witnesses indicated that the service is utilized because it was either not economical to use their own trucks during winter months or shipments are sometimes made on days their trucks are not operated. Another stated that it would be necessary to make deliveries himself if applicant did not handle small shipments.

Two operators of resorts at or near Long Barn stressed the personal nature of Sundborg's service in receiving orders and delivering small shipments during both summer and winter months. They urged that the service be continued. It was stipulated that three others, two located at Twain Harte and one at Confidence, would give similar testimony.

The granting of the application is opposed by Hart N. Cook, applicant in Application No. 28683. However, he does not object to the removal of the restrictions imposed by Decision No. 20573, supra, provided that in deciding his application for a certificate of public convenience and necessity, now pending, the Commission authorizes him to transport local traffic between Sonora and Pinecrest and intermediate points. It is this protestant's view that the volume of available local traffic is sufficient to permit both carriers to operate successfully without infringing upon each other's business. He contends that as between the applicants he should be given preference due to the earlier filing of his application. The question is

also raised as to Sundborg's fitness to hold common carrier operating authority by reason of his failure to observe the restrictions, the removal of which is now sought.

Conclusions

The evidence is convincing that there is a need for high-way common carrier operations between Modesto and the points applicant Cook seeks to serve.

The principal question which arises in connection with these proceedings is whether both applicants should be authorized to transport local shipments between Sonora and Pinecrest and intermediate points without any restrictions or limitations, and if not, to which applicant, if any, such authority should be granted.

It is clear that Sundborg performs a necessary service of a type which is responsive to the local requirements of the territory in which he operates. Moreover, it does not appear that Cook is prepared to render a similar service under his proposed method of operation. His trucks are scheduled to arrive at and depart from Sonora enroute to Pinecrest at 8:00 a.m. — undoubtedly too early to receive shipments which are now transported by Sundborg.

A considerable portion of the traffic heretofore transported by Sundborg is of a different nature than that which Cook might reasonably be expected to haul under ordinary conditions. However, we are satisfied that any substantial diminution in the revenues received by Sundborg would tend to jeopardize his ability to continue operations.

Under the circumstances, it is our view that the seasonal

and weight restrictions in the certificate previously granted to Sundborg should be removed. We further conclude that any certificate of public convenience and necessity granted to Cook should exclude authority to transport local shipments moving between Sonora and Pinecrest and intermediate points other than when tendered or received for transportation at a regularly established depot of another common carrier at Sonora.

Permission to transport shipments from common carrier depots in Sonora should be granted to applicant Cook, because the record in Application No. 28683 discloses that considerable dissatisfaction has arisen in the past in reshipping freight at Sonora. Such authority, however, should not be construed as permitting the establishment of any through route or joint or other rate arrangement as to which the express approval of the Commission is required under the provisions of Section 50-3/4 (c) of the Public Utilities Act.

The Commission's action in removing the restrictions embodied in Decision No. 20573, supra, should not be regarded as condoning Sundborg's failure to observe the terms of his operative right. He is admonished to forthwith and in the future comply with all of the applicable provisions of the statutes administered by the Commission and of its rules and regulations thereunder.

Findings

Upon consideration of all of the facts and circumstances of record in these proceedings, the Commission is of the opinion and finds:

1. That public convenience and necessity require the establishment and operation by Hart N. Cook of a highway common

carrier service for the transportation of property other than lumber, livestock and household goods, as proposed in Application No. 28683, as amended, excluding the transportation of local shipments between Sonora and Pinecrest and intermediate points when not tendered or received at depots of other common carriers in Sonora.

2. That public convenience and necessity require the operation by G. W. Sundborg of a highway common carrier service for the transportation of freight between Sonora and Pinecrest and intermediate points and that the seasonal and weight limitations imposed by Decision No. 20573, supra, should be removed.

Hart N. Cook is hereby placed on 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

Public hearings having been had and the Commission, upon the evidence received, having found that public convenience and necessity so require,

IT IS ORDERED:

1. That a certificate of public convenience and necessity

be and it is hereby granted to Hart N. Cook, authorizing the establishment and operation of a service as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, for the transportation of property other than lumber, livestock and household goods (a) between Modesto, on the one hand, and Knights Ferry, Jamestown, Sonora, Standard, Tuolumne, Soulsbyville, Strawberry, Pinecrest and intermediate points, on the other hand, and (b) between all intermediate points between Knights Ferry and Pinecrest, inclusive, other than between Sonora and Pinecrest and intermediate points via Twain Harte, Long Barn or Strawberry, unless said property is tendered or received for transportation at the regularly established depot of a common carrier other than Hart N. Cook at Sonora.

2. That in providing service pursuant to the certificate herein granted, Hart N. Cook shall comply with and observe the following service regulations:

- (a) Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days from the effective date hereof.
- (b) Applicant shall commence the service herein authorized within a period of not exceeding 60 days from the effective date hereof and 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, appropriate tariffs and time schedules on not less than 5 days' notice to the Commission and the public.
- (c) Subject to the authority of the Commission to change or modify it by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along the following route:

Between Modesto and Oakdale via county road through Riverbank; between Oakdale and Sonora via California Highway 120; between Sonora and Strawberry via California Highway 108, including connecting roads to Standard, Tuolumne, Soulsbyville and Pinecrest.

3. That the declaratory paragraph of the order in Decision No. 20573, dated December 13, 1928, in Application No. 14785, reading as follows:

"THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by G. W. Sundborg from June 1st to October 1st, approximately, of an automobile truck-line as a common carrier of freight between Sonora and Pinecrest, and intermediate points via Twain Harte, Long Barn and Strawberry, provided however, that said applicant shall carry no single package weighing less than 100 pounds from any one consignor to any one consignee to and from any point on his proposed route now served by C. F. Whipple."

be and it is hereby amended to read as follows:

"THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by G. W. Sundborg of an automobile truck-line as a common carrier of freight between Sonora and Pinecrest, and intermediate points via Twain Harte, Long Barn and Strawberry."

4. That in providing service pursuant to the amended certificate herein granted, G. W. Sundborg shall comply with and observe the following service regulations:

- a. Applicant shall file a written acceptance of the amended certificate herein granted within a period of not to exceed 30 days from the effective date hereof.
- b. Applicant shall comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A within a period of not to exceed 30 days from the effective date hereof by filing, in triplicate and concurrently making effective, appropriate tariffs and time schedules on not less than 5 days' notice to the Commission and the public.

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

Dated at San Francisco, California, this 18th
day of May, 1948.

R. B. Dutton

Justice F. Casper

James H. Russell

Harold A. Kula

Samuel H. Potter
COMMISSIONERS