

ORIGINALDecision No. 75255

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of THE ATCHISON, TOPEKA AND SANTA)
 FE RAILWAY COMPANY, a corporation,)
 for authority to discontinue agency)
 service at its station at Dinuba,)
 County of Tulare, State of)
 California.)

Application No. 49981

John J. Schimmenti, for petitioner.
K. A. Vose, for Transportation-Communication
 Employees Union; Nerquiz Apkarian, for
 T. Apkarian & Sons, protestants.
M. E. Getchel, for the Commission staff.

OPINION ON REHEARING

On July 2, 1968, the Commission issued Decision No. 74338 which denied the instant application. A petition for rehearing was filed by petitioner on July 24, 1968. Rehearing was granted on August 20, 1968 and was held at Dinuba on November 19, 1968, before Examiner O'Leary.

Additional evidence was presented by petitioner with respect to the process of inspection of defective cars, liability for shipments and anticipated economies, which subjects were the grounds relied upon in previously denying the application. The specific grounds are set forth in Decision No. 74338 and need not be repeated herein.

With respect to the process of inspection of defective cars the evidence discloses that presently when a defective car is furnished, the agent at Dinuba is notified and he in turn informs petitioner's office at Calwa that an inspection is needed. If the

application is granted the only change required would be that the shipper notify the Fresno agent by use of the toll-free line rather than notify the Dinuba agent.

If the application is granted petitioner will provide a locked box wherein shippers will deposit the bills of lading. The shippers and petitioner will have keys to said box. The regular train which goes through Dinuba each night would pick up the cars and the conductor would sign the bills of lading and copies of the bills of lading would be left in the box for the shippers. At the original hearing in this matter there was uncertainty as to what petitioner's position was as to liability for the shipments between the time of the deposit of the bills of lading in the locked box and the signing of the bills by the conductor of the train. The additional evidence presented at the rehearing discloses that it is petitioner's intent that it be responsible for the shipments at the time the bills of lading are placed in the locked box. The following summation of the law on this point is found at 13 Am. Jur. 20, 767: "Where goods are placed for shipment in a car which is left standing on a side track by a carrier for that purpose, and the railroad company is notified of such loading, a constructive delivery to the latter takes place, eo instante, without any further act on the part of the shipper, in the absence of an agreement, usage or custom controlling the matter...." Those shippers who desire to have their bills of lading signed at the time they make delivery can have them signed at any of petitioner's agency stations, the nearest being Reedley and Cutler which are located seven and eight miles from Dinuba, respectively.

With respect to the issue of anticipated economies the Fresno agent testified that the Fresno office of petitioner could handle the work presently performed by the Dinuba agent without additional personnel. The additional evidence with respect to car inspection processes discloses that no additional cost will be incurred.

After rehearing and reconsideration of this matter the Commission finds that:

1. Public convenience and necessity no longer require the maintenance by The Atchison, Topeka and Santa Fe Railway Company of an agency at Dinuba.

2. After the termination of the agency at Dinuba, the station building will not be needed in public service.

The Commission concludes that the petition should be granted.

ORDER ON REHEARING

IT IS ORDERED that:

1. The Atchison, Topeka and Santa Fe Railway Company is authorized to discontinue its agency at Dinuba, Tulare County, subject to the following conditions:

- (a) The Atchison, Topeka and Santa Fe Railway Company shall maintain said station in a nonagency status for the receipt or delivery of freight in any quantity, carloads or less.
- (b) Within one hundred twenty days after the effective date hereof and not less than ten days prior to the discontinuance of the agency at Dinuba, The Atchison, Topeka and Santa Fe Railway Company shall post a notice of such discontinuance at the station and, within one hundred twenty days

after the effective date hereof and on not less than ten days' notice to the Commission and to the public, petitioner shall file in duplicate amendments to its tariffs showing the change authorized herein and shall make reference in such notice and tariffs to this decision as authority for the changes. In no event shall the agent be removed, pursuant to the authority hereinabove granted, earlier than the effective date of the tariff filings required hereunder.

- (c) Within thirty days after discontinuance of service as herein authorized, petitioner shall, in writing, notify this Commission thereof and of compliance with the above conditions.

2. After the authority granted by paragraph 1 of this order has been exercised, The Atchison, Topeka and Santa Fe Railway Company may remove its station building at Dinuba.

The effective date of this order shall be twenty days after the date hereof.

28th Dated at San Francisco, California, this
day of JANUARY, 1969.

William Synovis, Jr.
President

Augusta Lee

John P. Morrissey

(1) William L. ...

Thomas ...
Commissioners