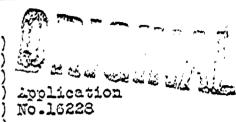
Decision No. 22558

PRFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the PACIFIC ELECTRIC MOTOR TRANSPORT COMPANY for a certificate of public convenience and necessity to operate a motor freight service between San Francisco, Oakland, Berkeley, Emeryville, Richmond and Alameda on the one hand, and Santa Cruz and Capitola on the other.



C.W.Cornell and H.W. Hobbs, for Applicant, Douglas Brookman, for L.A. Thornewill, Protestant. Gwyn H. Raker, for Highway Transport Company, Protestant.

LOUTTIT, Commissioner -

OPINION and ORDER OR REFERRING

On April 4, 1930, the Commission made its order (Decision No.22293), denying the application of Pacific Motor Transport Company, applicant herein, for a certificate of public conventience and necessity to operate a common carrier auto trucking service between San Jose on the one hand and Santa Cruz and Capitola and intermediate points between Los Gatos and Santa Cruz and Cruz and Capitola, inclusive, on the other. A rehearing was petitioned for and on May 1, 1930, the Commission made its order granting said rehearing.

Further public hearings were held at Santa Cruz and at San Jose. A large number of witnesses testified, some being called by applicant and others (about an equal number) by Highway Transport Company, protestant, which, as a certified common carrier has since about May 1, 1930, been giving a daily service in the territory proposed to be served daily by applicant herein. Prior to that time, for a period of about 2x years, it had served the territory three times a week.

A review of this evidence clearly indicates that the establishment of the daily service instead of a thrice weekly service met a public need. It further appears, however, that this daily service was not installed or established until applicant herein appeared as a potential competitor with an offer of what is practically a parallel service at a lower rate. The general trend of all of the testimony offered was to the effect that the territory contiguous to and including Santa Cruz was in need of such a service. That sufficient tennage is available to make the service a compensatory one is also apparent from the testimony.

We cannot escape the conclusion that the Santa Cruz territory was deprived of a much needed service through the inactivity of Highway Transport Company over a period of years. Sudden activity designed to forestall competition cannot be accepted by the Commission as a proper method of measuring the transportation needs of a community. We therefore find as a fact that public convenience and necessity require the operation of the service proposed by applicant herein.

Pacific Motor Transport Company, a corporation, is 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.

The following form of order is recommended:

ORDER

A rehearing having been held in the above entitled proceeding, evidence heard and the matter taken under submission,

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THE RAILROAD COLLISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by Pacific Motor Transport Company, a corporation, of an automotive service for the transportation of freight between San Jose on the one hand and Santa Cruz and Capitola and all intermediate points between Los Catos and Capitola, both inclusive, on the other, and IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such a service be and it is hereby granted to said Pacific Motor Transport Company, a corporation, subject to the following conditions: That in the performance of said service the following route shall be followed: Main highway between San Jose and Santa Cruz, via Glenwood, thence via main highway via Soquel, to Capitola, also as an alternate route from the main los Gatos-Sonta Cruz highway at Felton Road to Felton, thence over the Boulder Croek-Senta Cruz highway to Santa Cruz. 2- That freight may be picked up at or delivered to all points within one mile on either side of the highways named in the paragraph immediately preceding this. That no local service shall be performed between Santa Cruz and Felton. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof. 5- Applicant shall file, in duplicate, within a period of not to exceed thirty (30) days from the date hereof tariff of rates, such tariff of rates to be identical with those shown in amended Exhibit B attached to the application herein, also time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty (60) days from the date hereof. 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 secured. **-3-** 7- No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

The above Opinion and Order are hereby declared to be the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2/2t day of

COMMISSIONERS.