

Decision No. 28280.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of Application of)
PACIFIC MOTOR TRUCKING COMPANY)
for certificate of public con-)
venience and necessity for the)
transportation of property by)
motor trucks under contract for)
certain common carriers between)
Brawley and Westmorland.)

Application No. 18861.

E. J. Foulds, A. A. Jones and R. E. Wedekind, by
R. E. Wedekind, for applicant.
Wallace K. Downey, for Motor Freight Terminal
Company, protestant.
Harry See, for four Railroad Brotherhoods, inter-
ested parties.
Percy C. Thacker, for Pioneer Truck & Transfer
Company, protestant.
Edward Stern, for Railway Express Agency, Inc.,
intervener on behalf of applicant.

BY THE COMMISSION:

O P I N I O N

Applicant herein, a California corporation, seeks a certificate of public convenience and necessity for the transportation of property by automobile trucks between Brawley and Westmorland, the property to be transported to consist entirely of freight or express moved on behalf of the Southern Pacific Company, the Railway Express Agency and the Pacific Motor Transport Company.

Public hearings were held before Examiner Geary at Brawley June 16 and at Los Angeles July 14, 1933, and the proceeding

having been submitted is now ready for our opinion and order.

At the commencement of the hearing the Motor Freight Terminal Company moved a dismissal of the entire proceeding, contending that the Commission was without jurisdiction because the applicant would not directly serve the shipping public. The question of the Commission's jurisdiction over a similar service was considered by the Commission in Application No. 13699, Decision No. 26261, of August 21, 1933, the Commission holding that it had jurisdiction. The motion to dismiss is denied.

The schedules to be operated will consist of two round trips daily, except Sundays and holidays. The distance from Brawley to Westmorland by the highway is seven miles, as compared with thirteen miles, the all-rail branch line mileage from Calipatria to Westmorland. At the present time Westmorland has freight service when carload shipments make necessary the sending of a train from Calipatria, which, with the exception of the fruit shipping season, averages only about six trips per month. The initial loss than carload tonnage is estimated at approximately five tons per month.

Witnesses supporting the application appeared on behalf of the Westmorland Chamber of Commerce and the Westmorland Farm Center. Individuals appeared on their own behalf, including the publisher of the Westmorland newspaper, the owner of the water system, the Mayor of the city and a number of others. The testimony

of these parties was along the same general lines, and in substance declared that they had for many years been endeavoring to secure an improvement in the movement of less than carload freight into the Westmorland station; that the infrequent rail services were almost impossible and they were receiving their freight via the truck lines or by going themselves to the Brawley station for the shipments. There was also a vigorous complaint against the Railway Express Agency because of its failure to maintain an office in Westmorland. A representative from this company testified that if the application were granted his company would arrange for a Westmorland service.

The application was protested by the Motor Freight Terminal Company and the Pioneer Truck & Transfer Company. No shipper witness appeared on behalf of the protestants, but it was stipulated that certain merchants in Westmorland could and would testify that the certificated trucks now in operation were rendering a satisfactory service and therefore they were not in favor of the application being granted. The Motor Freight Terminal Company presented testimony at Los Angeles showing the cost of operating trucks of the character intended to be used by this applicant between Brawley and Westmorland. Both the Motor Terminal Company and the Pioneer Company expressed a willingness to enter into contractual arrangements with applicant or establish joint rates to perform the proposed services. Applicant declined the offer, declaring that to do so would mean its complete retirement from the less than carload activities and the abandonment of the facilities now offered to the public, a surrender which it could not consider.

Applicant's proposed service is merely a substitution of regularly scheduled highway trucks for irregular and very unprof-

itable railroad trains and will afford to the patrons of the Southern Pacific Company, Pacific Motor Transport Company and Railway Express Agency a completed through service more prompt than that now enjoyed, and will meet a real public need. We are of the opinion that the application has been justified and it will therefore be granted.

Pacific Motor Trucking Company 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.

ORDER

A public hearing having been held upon the above entitled application, the matter submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
HEREBY FINDS AND DECLARES that public convenience and necessity require the operation by Pacific Motor Trucking Company of an automobile truck service between the railroad stations located on the Southern Pacific Company between Brawley and Westmorland, and over the routes as set forth in Exhibit "E" attached to the application herein for the transportation of freight, such service to be limited to the transportation of such freight as may have been previously consigned for transportation over the line of the Southern Pacific Company and which may be delivered to the applicant

by the Southern Pacific Company or the Pacific Motor Transport Company, or the Railway Express Agency, Inc. at the railroad freight stations designated below and to be redelivered by the applicant at another of said freight stations, to-wit: at the freight stations of the Southern Pacific Company located at Brawley and Westmorland.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such a service be and the same hereby is granted to Pacific Motor Trucking Company, subject to the following conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.
2. Applicant shall file, in duplicate, within a period of not to exceed twenty (20) days from date hereof copies of the contract between applicant and Southern Pacific Company relating to the operation herein directed to be certificated, and, in triplicate, the rates to be charged, and, in duplicate, time schedules, said rates and time schedules to be satisfactory to the Railroad Commission. Applicant shall commence operation of said service within a period of not to exceed sixty (60) days from date hereof.
3. 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.
4. 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 days from the date hereof.

Dated at San Francisco, California, this 21st day of August, 1933.

Oliver J. ...
Leon ...
W. J. ...
M. B. ...
COMMISSIONERS.