

Decision No. 26489.

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
WALTER C. ECK and WILLIAM F. BENNETTS )  
for certificate of public convenience )  
and necessity to operate freight truck ) Application No. 18631.  
service between Sacramento and Grass )  
Valley and Nevada City. )

Otis D. Babcock, for applicants.  
Frank B. Austin for Nevada County Narrow Gauge  
Railroad, protestant.  
Edward Stern for Railway Express Agency, Inc.,  
protestant.  
E. W. Hobbs for Southern Pacific Company and  
Pacific Motor Transport Company, protestants.  
E. C. Lucas, Orla St. Clair and Guy Hill for  
Pacific Greyhound Lines, protestant.

BY THE COMMISSION:

O P I N I O N

Walter C. Eck and William F. Bennetts, applicants in the above named proceeding, have petitioned the Railroad Commission for authority to operate a motor truck line as a common carrier of freight between Sacramento, Grass Valley and Nevada City and intermediate points, save and except that no traffic will be handled between Sacramento and Auburn.

Public hearings on this application were conducted before Examiner Satterwhite at Grass Valley, the matter was submitted and is now ready for decision.

Applicants propose to charge rates in accordance with

amended Exhibit "A" and to operate one round trip daily, excepting Sundays and holidays, in accordance with Exhibit "B", and to use the character of equipment described in Exhibit "C" attached to said application.

Nevada County Narrow Gauge Railroad, Southern Pacific Company, Pacific Motor Transport Company, Pacific Greyhound Lines, Inc., and American Railway Express Agency, Inc., protested the granting of this application.

The record shows that each of the applicants has been a produce dealer at Grass Valley for several years past, purchasing his stock of produce at Sacramento and selling to various merchants at Grass Valley, Nevada City and other points.

Applicants had also operated individually for some time, in connection with their produce enterprises, a common carrier truck transportation service for many of their patrons and others, which service was terminated by cease and desist orders issued by this Commission in Case 3551, Decision 25597, and Case 3383, Decision 25599.

William F. Bennetts, co-applicant, testified at length in support of the proposed service and called as witnesses several of his patrons and other merchants at Grass Valley and Nevada City.

The evidence shows that applicants estimate that they will transport about five tons of freight daily from Sacramento for various merchants who desire the truck service. The chief prospective patrons of applicants who appeared as witnesses consist of a group of about ten independent grocerymen who desire the cheaper rates and early store door deliveries proposed by applicants. Several of these grocerymen testified that they are in active competition with the Safeway Grocery Company, a large

chain store operating its own trucks, and contended that the rates of the railroad in conjunction with the local drayage charges are too high to permit of profitable competition with the chain stores. For this reason several of these grocerymen and other merchants who have no truck equipment of their own are now using the so-called "wild-cat" truckers, whose rates are lower than the rail rates. Several of these merchants declined to promise to use the truck service exclusively, but stated that it would be convenient for small, as well as emergency, shipments on account of the proposed early morning delivery.

The testimony of Mr. Bennetts shows that while he has had requests to establish the truck service from other merchants than grocerymen, such as bakers, meat dealers, plumbers and service stations, the bulk of his tonnage to the extent of at least 75% will consist of groceries, flour, grain and feeds. He estimates that he will also transport from Auburn about three tons daily to different consignees at Grass Valley and Nevada City. Little or no evidence was offered by applicants as to the need for any intermediate service between Auburn and Nevada City. The evidence shows that the applicants' prospective business if a certificate is authorized would consist in the main of high-grade traffic as above referred to. A study of applicants' rate schedules indicates that their proposed cheaper rates, as compared with present rail rates, are designed to attract high-grade traffic, leaving almost wholly, or at least to a very great extent, to the rail service the transportation of the heavier and more bulky freight. Although applicants' proposed rates are cheaper or lower than the rail rates of protestants no evidence was introduced by applicants showing that the existing rail rates are unreasonable or at all

excessive.

Protestants allege as ground for protest:

- (a) That they have been, and are now, rendering an adequate service at reasonable rates to the communities sought to be served.
- (b) That public convenience and necessity does not require the establishment of the proposed additional truck service.
- (c) That the establishment of this service will result only in the abandonment of the rail service by the Nevada County Narrow Gauge Railroad Company.

Protestants offered considerable oral and documentary evidence in support of their protests.

The communities of Grass Valley and Nevada City have been served since 1876 by the Southern Pacific Company in conjunction with the Nevada County Narrow Gauge Railroad, which latter road operates from Colfax, approximately 20 miles, to Nevada City. The investment of this narrow gauge railroad represents a book value of \$774,520, its physical properties alone being above \$450,000. The present management since 1926 has further invested \$22,000 in capital improvements. It operates entirely in mountainous territory and serves about 10,000 people living in two communities and the surrounding area.

The record shows that the rail carriers provide an overnight service to the merchants and other business concerns of the two communities served. The narrow gauge operates a mixed train, No. 2, handling merchandise, express and mail and carries approximately 75% of the daily traffic leaving Colfax at 6:45 A.M. and reaches Grass Valley at 7:50 A.M. and Nevada City at 8:11 A.M., and the freight is immediately available at the station warehouse. Freight in carloads is transported on the first two schedules, leaving Colfax at 6:45 A.M. and 1:20 P.M. These schedules have been

maintained regularly for about four years. I.C.L. freight is received at Sacramento up until 5:00 P.M. each day by the Southern Pacific Company and is then transported in a merchandise car leaving Sacramento at 6:15 P.M. and arriving at Colfax at 10:40 P.M. on the same day and then transferred to the narrow gauge at 3:00 A.M. to expedite the service.

The narrow gauge railroad also operates an express and freight service by passenger bus between Auburn and Nevada City, making direct connections with the Pacific Greyhound Lines operating from Sacramento to Auburn, but although there are two convenient schedules daily over this bus service little or no business is offered by residents along the Auburn road to Grass Valley. The Railway Express Agency, Inc. operates a pick-up and delivery service which is utilized satisfactorily by numerous shippers in these two mountain towns.

The testimony of the shippers and receivers of freight including leading merchants and grocerymen introduced by protestants was uniformly to the effect that the existing rail service between the points proposed to be served was adequate and generally satisfactory. They testified that the drayage service from the rail depot was satisfactory and in this connection it was shown that about 45 merchants and shippers have definite and regular arrangements with the local draymen for hauling their freight to their respective places of business.

Gold mining and fruit raising are the principal industries supporting the communities sought to be served. The narrow gauge railroad is tributary to an extensive fruit raising area and approximately 150 cars in good seasons are shipped annually from the Grass Valley and Colfax district.

T. G. Mitchell, Manager of the Colfax Fruit Growers Association, testified to the highly essential services of the narrow gauge both in respect to expedition and refrigeration, including a favorable blanket rate, which is the same rate enjoyed by all fruit houses in Placer County located on the main line of the Southern Pacific Company. He testified that the abandonment of this rail service would be a very great detriment to the members of this Association which would compel long and unsatisfactory truck hauls at a greatly increased cost of transportation and result in bruised fruit and delayed refrigeration.

Charles T. Law, an official of the Nevada Irrigation District, testified also to the special advantages of the narrow gauge rail service in transporting satisfactorily the fruit crops of the growers served by this large irrigation district, and stated that the enforced discontinuance of the rail service would work great detriment to the irrigation district, as well as the growers.

Grass Valley and Nevada City have for many years enjoyed the benefits of their extensive mining industries and the record shows that the Narrow Gauge Railroad has rendered indispensable services in marketing the ore products of these mines, as well as furnishing efficient and necessary transportation for the delivery of numerous supplies both in carload and L.C.L. shipments, such as heavy machinery, mining timbers, iron and steel articles, lumber, hay, cereal, sugar, gold and general merchandise. It was shown that these various commodities move at low joint and blanket rates and such a service cannot be replaced by rates equally low over the proposed truck line.

J. E. Taylor, President and General Manager of the Narrow Gauge Railroad, testified that the freight traffic which is now being transported into this territory over the Southern Pacific Company

and Narrow Gauge Railroad is necessarily so limited in volume that the establishment of the proposed truck service would inevitably compel the abandonment of the narrow gauge service, to the serious detriment of the best interests and welfare of the two communities and surrounding territory. He supported his contention by several exhibits showing constantly decreasing revenues in spite of vigorous economies and efforts to attract an increased business. The facilities of the narrow gauge are only two thirds utilized and the equipment can be made available to handle three times its present traffic.

It appears that the unregulated truck operators have by cut-throat competition made serious inroads upon the narrow gauge rail traffic, to the extent that the carload revenues have been depressed at least 13% and the proposed truck service would seriously jeopardize about 75% of the entire L.C.L. tonnage originating in Sacramento, San Francisco and Oakland. It was shown that reduction in rail rates from time to time has been made on various commodities to meet the growing competition of wild-cat carriers resulting in continued diminished revenues.

After a careful review of all the evidence in this proceeding, we are of the opinion and find as a fact that the public convenience and necessity do not require the establishment of the truck service proposed by applicants. The evidence shows that the existing carriers are adequately serving the territory involved, and while the proposed truck service might meet the demands of certain retail shippers and other receivers of freight such an additional service would no doubt intensify present competitive conditions and seriously impair the service of the protesting carriers particularly the Narrow Gauge Railroad who are meeting

satisfactorily the demands of most of the shippers and merchants.

O R D E R

Public hearings having been held in the above entitled proceeding, the matter having been submitted and being now ready for decision,

IT IS HEREBY ORDERED that said Application No. 18631 be and the same is hereby denied.

Dated at San Francisco, California, this 6<sup>th</sup> day of November, 1933.

C. J. Lewis  
Leon S. White  
W. J. Lee  
M. B. Harris  
W. H. Moore  
Commissioners.