

Decision No. 26717

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
PACIFIC MOTOR TRUCKING COMPANY for )  
certificate of public convenience )  
and necessity for the transportation )  
of property by motor trucks under )  
contract for certain common carriers )  
between Santa Barbara and Gaviota, )  
and stations intermediate thereto. )

Application No. 18863

ORIGINAL

A. A. Jones, for Applicant.

Wallace K. Downey and Hugh Gordon, for Motor Freight  
Terminal Company, Protestant.

Hugh Gordon, for Valley & Coast Transit, and Coast  
Line Express, Protestants.

Harry See, for the Brotherhood of Railway Trainmen,  
Protestant .

Norris Montgomery, for Mc Murrays Transportation  
Company, Protestant.

CARR, Commissioner -

OPINION and ORDER on REHEARING

Rehearing having been granted, a public hearing was had on December 13, 1933, at which certain additional evidence was adduced both by the applicant and the protestants, and the matter was submitted.

By testimony and stipulation the applicant offered limitations upon the service proposed as well as extensions to the scope of the service offered.

These limitations were that applicant would transport (a) no Pacific Motor Transport Company freight originating at Santa Barbara and terminating at Montecito, or the reverse, or originating at Santa Barbara and terminating at Gaviota, or the reverse (including intermediate points), and (b) no Southern Pacific or Railway Express Agency freight originating at Santa Barbara and terminating at Montecito, or the reverse.

The extension of its offer of service was that it would also transport freight tendered it by common carriers other than the Southern Pacific Company, Pacific Motor Transport Company and Railway Express Agency, such service to be rendered under a contract or on terms non-discriminatory as between the various common carriers served.

The applicant also presented a revised schedule of proposed operations and increased its estimate of tonnage to 29 per month.

The L.C.L. movement in the territory involved, both that now made by the Southern Pacific Company and the Pacific Motor Transport Company and the Railway Express Agency, and by the protesting truck carriers, is small and apparently yields little or no profit to any of the interests struggling to hold or secure a part of it. The applicant represents that all the service proposed will be performed with one Ford truck operating less than half time. By the plan here presented, the Southern Pacific Company will effect a considerable saving in the line haul costs it now bears and the shippers which patronize the Southern Pacific, Pacific Motor Transport and Railway Express will be the recipients of an improved service. This improved service may tend to divert some business from the lines of the protestants, although the evidence does not indicate the bettered service will overcome the tendency of shippers to favor the carrier they are now patronizing. A more rational conclusion is that such improvement in service will be limited to preventing a loss of traffic.

The protestant, Motor Freight Terminal Company, insists that because of the idle space in its equipment it can afford to, and will contract to perform the identical service proposed by the applicant at the same or at a less compensation than the applicant estimates it will receive. It also insists it would take no competitive advantage if it rendered such service.

This truck carrier has a certificated right under which it could perform the service. Somewhat similar offers were made by other truck lines whose certificates cover part of the territory involved.

That the rail carriers should be permitted and encouraged to adapt the transportation services they offer to modern conditions is clear. It is equally clear that some use of truck transportation is appropriate to this end. The exact means by which progress is to be attained and the limitations and restrictions which should be made by public authority are not so clear. Every case is confused by the inevitable struggle between contending agencies for advantage. Just treatment of these agencies is important but subordinate to the larger aim of bringing about good and economical transportation to the shipping public.

There are at least two means of attaining the objective of improved service at lesser cost through substitution of truck movement of L.C.L. freight from depot to depot for the present slower and more costly rail movement:

1st. Certificates of public convenience and necessity may be granted to a subsidiary of the rail line authorizing it to move the rail L.C.L. freight from depot to depot.

This is the means thus far generally adopted with the approval of this Commission.<sup>1</sup>

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Re Pacific Motor Trucking Company, 38 C.R.C. 889, granting a certificate to carry freight of Southern Pacific Company, Pacific Motor Transport Company and Railway Express Agency, Inc. between various Southern Pacific Company freight stations in the San Joaquin Valley.

Re Pacific Motor Trucking Co., Decision No.26260, granting certificate to carry Southern Pacific Company, Pacific Motor Transport Company and Railway Express Agency, Inc. freight between freight stations of Southern Pacific Company at Brawley and Westmoreland.

Re Pacific Motor Trucking Company, Decision No.26134 of date July 10, 1933, granting certificate to carry Southern Pacific Company, Pacific Motor Transport Company and Railway Express Agency, Inc. freight between Southern Pacific Company freight stations at Felton and Boulder Creek.

2nd. The rail line may contract with a duly certificated truck line, not a subsidiary, to perform the line haul depot to depot service.

Public convenience and necessity is concerned more with the result achieved than with the particular means by which achieved. In a period where economic progress by a process of trial and error prevails to a large extent, it would seem appropriate that each of these means be given a trial. In some instances the one may prove the better, in some the other. The present seems to be a case where the second plan referred to may well be given a chance to prove itself. At best the record here is not persuasive of the existence of any public convenience and necessity for certificating a new truck service on the highways. The Commission might be justified in deducing its existence were it not for the fact that at no added expense and perhaps at a lesser expense the depot to depot movement can be effected through contract with a single existing certificated carrier.

It is not apparent how this second plan would here work any competitive injustice to the railroad and its affiliates. The proposed service, involving as it does merely the line haul depot to depot movement, would not bring a contracting line, even though a general competitor, into contact with the rail patrons. As to shipments from distant points, these are tied to the rails. As to Los Angeles and San Francisco shipments destined to the territory involved, the evidence tends to show they are relatively few in number and that each agency of transportation now is informed of the patrons of the other. The protestant, Motor Freight Terminal Company, has indicated its ability and willingness to conform its operations to the schedules proposed or as they may be changed from time to time.

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I (Contd)

Re Howard, 38 C.R.C. 240, granting certificate to carry Santa Fe L.C.L. freight between Oceanside, Vista, San Marcos and Escondido and between Oceanside and Fallbrook.

While for the reasons indicated the instant application should be denied, the denial should be without prejudice to its renewal. If the second plan, to which the railroad is thus left, does not work out satisfactorily there should be no bar to a renewal of the present application.

I recommend the following form of order:

ORDER

Public hearing having been had on rehearing granted and the matter having been submitted,

IT IS HEREBY ORDERED that the application be denied, but without prejudice.

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

The foregoing opinion and order on rehearing are hereby approved and ordered filed as the opinion and order on rehearing of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10<sup>th</sup> day of

January, 1934.

C. J. Seamy  
Leon Whipple  
W. A. Carr  
~~W. A. Carr~~  
W. A. Carr  
COMMISSIONERS.

I dissent:

The gist of the majority opinion is contained in the following extracts from it:

" \* \* \* By the plan here presented, the Southern Pacific Company will effect a considerable saving in the line haul costs it now bears and the shippers which patronize the Southern Pacific, Pacific Motor Transport and Railway Express will be the recipients of an improved service. This improved service may tend to divert some business from the lines of the protestants, although the evidence does not indicate the bettered service will overcome the tendency of shippers to favor the carrier they are now patronizing. A more rational conclusion is that such improvement in service will be limited to preventing a loss of traffic. "

"That the rail carriers should be permitted and encouraged to adapt the transportation services they offer to modern conditions is clear. It is equally clear that some use of truck transportation is appropriate to this end. \* \* \*."

It would be difficult to state more convincingly the fundamentals requiring the issuance of a certificate of convenience and necessity.

Without injury to the competing certificated carriers the railway company and subsidiaries by use of trucks will be enabled to reduce costs of operation, (which means ultimate lowering of rates) and to improve its service to the public. The public should not be deprived of these benefits.

Moreover, the majority opinion approves the use of trucks for this purpose.

A certificate should issue.

It is not inappropriate to suggest that the railway company undertake to contract with a certificated truck line to perform the proposed service but it is not appropriate to withhold a certificate to enforce the suggestion.

*M B Lewis*  
Commissioner.