

Decision No. 26939

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 Metz and San Luis Obispo and
stations intermediate thereto.

Application No. 18881.

ORIGINAL

A. A. Jones for applicant.
Douglas Brookman for Valley & Coast Transit Company,
protestant.
Harry See for Brotherhood of Railroad Trainmen,
protestant.
Edwin G. Wilcox for Oakland Chamber of Commerce.

BY THE COMMISSION:

O P I N I O N

The Pacific Motor Trucking Company, hereinafter referred to as the trucking company, a subsidiary of the Southern Pacific Company, hereinafter referred to as the railroad, by this application and as amended seeks a certificate of public convenience and necessity to operate an automobile truck service for the transportation of express and less than carload freight between all railroad stations located between San Luis Obispo on the south and Metz on the north, a distance of 100 miles.

The services will be on behalf of the railroad only and will consist entirely of shipments originated by the agencies operated by or in connection with the railroad, the Railway Express Agency, Inc., and the Pacific Motor Transport Company.

Public hearings were held by Examiner Geary at Paso Robles on September 18, 1933, January 9 and February 6 and 7, 1934. Briefs were filed March 1, 1934, and the proceeding having been properly submitted is now ready for our opinion and order.

Fourteen exhibits were filed and testimony received from some 20 witnesses.

The trucking company will function only as a hauling unit for the railroad transporting freight and express originated by the carriers heretofore named. It will not deal with the shipping public, the charges assessed will be those effective in the tariffs of the operating companies, and the total compensation will be received from the railroad under the terms of a contract copy of which was filed as an exhibit. Applicant, acting as the agent, will merely substitute its trucks for the freight trains and in this respect its activities will not be materially different from those performed throughout the United States by connecting railroads or independent terminal belt lines when they effect deliveries off the rails of the line haul carrier or perform other accessorial services.

The testimony and exhibits make clear a continuous and heavy decline in the tonnage haul by the railroad, as illustrated by a chart (Exhibit No. 14) showing 151,369 pounds at San Ardo in 1926 and 30,980 in 1933, a loss of 80 percent; and at San Lucas 215,027 pounds in 1926 and 29,260 in 1933, a loss of 86 percent. The railroad now accomplishes deliveries of less than carload freight three times per week to the stations involved. Under the present freight train schedules at most of the stations, 62 hours are required to effect deliveries from San Francisco or Oakland and 86 hours from Los Angeles. The proposed trucks operating out of San Luis Obispo will complete deliveries from San Francisco, Oakland and Los Angeles in 16 hours and 35 minutes, thus placing these industrial communities on a time equality in reaching the consuming stations. The railroad now moves less car load freight on passenger trains between San Francisco-Los Angeles and San Luis Obispo, a point where the north and south bound trains meet, and here the merchandise cars are set out. It is the intention to

transfer the freight at San Luis Obispo into the trucks and move the tonnage immediately, leaving this transfer point at 5:30 A.M., thus affording first instead of second morning deliveries at the destination points.

The preponderance of testimony from shipper witnesses was an endorsement of the application. The Chambers of Commerce at Los Angeles and Oakland sent witnesses who testified they were severely handicapped and could not properly serve customers within this territory because the movement by rail gave nothing better than an unsatisfactory second morning delivery. Other witnesses doing business at the terminal stations were equally positive in their support of the application for the reason that quick and early deliveries were necessary. The contemplated truck services would not only expedite the movement of tonnage between San Francisco-Los Angeles and these stations but it would also speed up the deliveries between them and all points within the State of California and throughout the United States.

An exhibit entered by a transportation expert for the railroad showed that there would be a saving of \$8,562.00 per annum in its freight train operations if the involved territory were served by the trucks at a cost of \$6,024.00, thus creating a net reduction in operating expenses of \$2,538.00 per annum. It was further shown that 521 shippers and receivers of less than carload freight now using the slow, infrequent freight trains would be benefited by the substitution of the trucks.

The principal opposition to the application came from the Valley and Coast Transit Co., a certificated line operating between San Francisco and San Luis Obispo on a schedule of six days per week. The services it performs are apparently satisfactory as far as they extend but the route does not serve the railroad stations between Kings City and Metz, neither does it function between San Luis Obispo and Los Angeles where a large volume of

the involved tonnage originates. This protestant offered to contract with the railroad and perform the services proposed by applicant in connection with its certificated highway operations but it is not authorized to serve all of the depots and would have to change its local schedule now leaving San Luis Obispo about noon to a departure time between 5:00 and 6:00 A. M. and could not handle the additional tonnage without employing a second truck. Applicant vigorously opposed the offer upon the contention that it must preserve the existing railroad in the transportation business and could not surrender its agencies to a competitor. As a counter proposition it offered to contract for the haulage of protestant's tonnage into San Luis Obispo for distribution from that point, which tender was likewise rejected.

This application in substance is paralleled by Application No. 18699, decided August 21, 1933 (38 C.R.C. 889) wherein we said:¹

The operative rights of protestant will not be infringed upon by this applicant for the tonnage involved now moves by the railroad and not by protestant's trucks.

Reference might here be made to a recent report to the President of the United States by Federal Coordinator Eastman, wherein he recommended that railroads be permitted to use trucks and buses freely in connection with their rail service.

1. "Do convenience and necessity require the proposed operation? There is now a triweekly train service covering the points involved. There is proposed in lieu thereof, a daily truck service for less than carload freight, usually with first morning deliveries. Rail service will not be abandoned, but will be limited to carload freight. *** This is not a case of a new carrier entering an already overcrowded field. It is a question of improving and cheapening an existing service. There was ample evidence that that portion of the public now patronizing the rails desires the improvement. Convenience will unquestionably be greatly advanced. In this period of depression when it is difficult to pay for necessity, it could be well contended that convenience at additional cost is without economic justification. But this is a case where convenience brings with it reduced cost."

The record conclusively shows that the shipping public, especially those located at far distant points and using the facilities of the Southern Pacific Company, Railway Express Agency, Inc., and the Pacific Motor Transport Company, are entitled to an expedited and more frequent service than is now being rendered by the railroad freight trains. The certificate will 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.

O R D E R

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

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FINDS 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 main line of the Southern Pacific Company between San Luis Obispo and Metz and over the route as set forth in Exhibit A 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.

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 fifteen (15) days from date hereof.
2. Applicant shall file, in duplicate, within a period of not to exceed twenty 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 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 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 (20) days from the date hereof.

Dated at San Francisco, California, this ^{16th}~~25~~ day of April, 1934.

C. L. Seaver
Leon Whalley
M. J. Carr
W. B. Lewis
Walter P. ...
Commissioners.