

Decision No. 27229

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
MOTOR FREIGHT TERMINAL COMPANY, a
corporation, for a certificate of
public convenience and necessity to
operate an auto truck line for the
transportation of property between
Los Angeles, California, and other
points on its system, to Earlimart,
Pixley and Tipton.

Application No. 19282

ORIGINAL

Wallace K. Downey, for Applicant.

Edward Stern, for Railway Express Agency, Inc.,
Protestant.

H. W. Hobbs, for Pacific Motor Transport Company
and Southern Pacific Company, Protestants.

Rex W. Boston, for Asbury Truck Company, Protestant.

WARE, Commissioner -

O P I N I O N

This applicant, Motor Freight Terminal Company, asks for
three extensions of its operative rights, to wit:

I. To engage in the transportation of property by
auto trucks as a common carrier between Los Angeles,
California, and all other points it is at present
authorized to serve with unrestricted service on the
one hand, and Tipton, Pixley and Earlimart (between
Tulare and Delano on Highway 99) on the other hand.

II. The right to serve the territory within five (5)
miles of the highway traversed between Delano and
Tulare.

III. The right to alternative routes for the operation
of its equipment in serving the communities and cities
it is authorized to serve on the so-called "Porterville
Loop Highway" as follows:

1. Highway running easterly from Tulare to
Lindsay.

2. Highway running easterly from Tipton to
Porterville.

The within matter was heard in Los Angeles and concluded in Fresno, the final brief having been filed June 30, 1934. It is now ready for decision and order.

In addition to the testimony of Mr. C. G. Anthony, Vice President and General Traffic Manager of Motor Freight Terminal Company, applicant presented the testimony of nine (9) witnesses comprising wholesale shippers from Los Angeles and Fresno, and retail shippers in the territory embracing Tipton, Pixley and Earlimart. From this testimony the following facts are established:

Applicant is now serving under regulation practically all of the points in the lower San Joaquin valley excepting the territory embracing Tipton, Pixley and Earlimart. Applicant's equipment traverses the route between these three points daily on its run between Los Angeles and Fresno. Consistent with a maximum of transportation efficiency, applicant could extend to these three communities a collection and delivery service which is not now offered by any other regulated transportation agency daily, and at reasonable rates.

A majority of those receiving freight at the three points mentioned are dissatisfied with the existing common carrier facilities offered by the protesting railroad and specifically complain that arrivals are delayed, hours of station agents are narrowly limited, and there is no pick-up and delivery service afforded. The record offers sufficient to warrant the conclusion that the existing service afforded Pixley, Tipton and Earlimart is unsatisfactory.

Said witnesses established the demand and necessity for the proposed service. As indicated, most of the territory now served by applicant is afforded the advantages contemplated herein. There is no longer justification to discriminate against

the three communities of Tipton, Pixley and Earlimart and to longer deprive said communities of the service proposed. To prolong such discrimination tends to inflict further hardship upon the shippers concerned and the agriculturalists located along this route, and likewise tends to retard the best results and maximum efficiency in the transportation offered and supplied by applicant. These communities have arrived at the place where they need and deserve the transportation advantages and conveniences which are comparable to points northerly and southerly therefrom, located upon the same Highway 99, and afforded under regulation by applicant. Certification of the proposed service will likewise tend to afford a proper allocation of freight from the unregulated carriers into a regulated channel.

The facts warrant and the protestants concede the right of applicant to serve the agriculturalists and shippers within five (5) miles on either side of Highway 99 between Tulare and Delano. All of the reasons which justify the service now rendered by applicant in the territory between Bakersfield and Delano are equally patent in the area involved herein. This proposed extension of service, if permitted, will establish greater uniformity in the transportation afforded by applicant.

Similarly do the protestants concede that applicant should be granted alternative routes as prayed for in serving communities and cities now authorized to be served on the so-called "Porterville Loop Highway" over the following two routes:

1. Highway running easterly from Tulare to Lindsay.
2. Highway running easterly from Tipton to Porterville.

The record is equally clear in establishing that these proposed alternative routes will offer a more expedited, efficient and desirable service to the shippers and communities

involved, and the granting of same will be in the public interest.

There is no merit to the protest of Asbury Truck Company. C. R. C. Decisions 26279 and 26503 (August and November, 1933), in re Application No. 18634, limited and restricted the certificated rights of protestant Asbury Truck Company to shipments of a minimum weight of 4000 pounds and consisting of "oil well supplies, heavy machinery, pipe, steel and tanks." The service of said protestant is specialistic in character and there is no evidence before the Commission to warrant the conclusion of any conflict between the protestant's existing, and the applicant's proposed service. The record offers no showing that Asbury Truck Company would be adversely affected by the granting unto applicant of an unlimited certificate as sought herein.

The application, as amended, should be granted in toto.

Motor Freight Terminal 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.

I recommend the following form of Order:

O R D E R

Motor Freight Terminal Company, a corporation, having made application to amend and enlarge its operating rights between Bakersfield and Fresno, a public hearing having been held and the matter having been duly submitted,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment of auto truck service to and from Pixley, Earlimart and Tipton, and along Highway 99 between Delano and Tulare and five (5) miles on either side thereof, and for alternate and connecting routes between Tulare and Lindsay and Tipton and Porterville.

IT IS HEREBY ORDERED that Decision No.24396, dated January 18, 1932, on Application No.17517, be and the same hereby is amended by striking therefrom, under the caption "San Joaquin Division", in the order thereto attached, paragraph (f) and substituting the following in lieu thereof:

(f) Service between Bakersfield and Fresno is limited to points on the State highway and five (5) miles on either side thereof, excluding local service between Fresno and Fowler, Selma, Kingsburg, Traver, Goshen Junction, Goshen, Visalia or Tulare or between any of said points, said restriction not to be construed to prevent the transportation of property between Fresno and Visalia or Tulare and points on said highway lying southerly or easterly of Visalia, nor between Delano and Tulare, via Highway 99, and five (5) miles on either side thereof, and including service to, from and between, Pixley, Earlimart and Tipton, and all other points on applicant's system.

IT IS HEREBY FURTHER ORDERED that paragraph (1) under said caption "San Joaquin Division", in the order attached to said Decision No.24396, on Application No.17517, be and the same hereby is stricken out and annulled.

IT IS HEREBY FURTHER ORDERED that a certificate of public convenience and necessity be and the same hereby is granted to Motor Freight Terminal Company for the transportation of property between Tulare and Lindsay and between Tipton and Porterville, via main county highway between said points, provided, no service shall be rendered to intermediate points, except such as are within lateral rights from Highway 99 granted herein, and 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, stipulating in said acceptance that the rights granted herein are an extension and enlargement of its rights as granted by Decision No.24396, on Application No.17517, and Decision No.26490, on Application No.18919, and consolidated therewith and not as new or separate rights.

2. Applicant shall file, in triplicate, and make effective within a period, of not to exceed thirty (30) days after the effective date of this order, on not less than ten days' notice to the Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the application, insofar as they conform to the certificate herein granted.

3. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five days' notice to the Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.

4. 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.

5. 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.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

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 23d day of July, 1934.

C. C. Seawell

W. A. Carr

M. B. Harris

W. L. McArthur
COMMISSIONERS.