

Decision No. 27234

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SANTA FE TRANSPORTATION COMPANY, a
corporation, for a certificate of
public convenience and necessity to
operate an auto truck service as a
common carrier between Fresno and
Porterville and intermediate points.)
Application No. 19030

ORIGINAL

E. J. Foulds and A. A. Jones, for interested parties.
E. T. Lucey and Berne Levy, for applicant.
Edward Stern, for Railway Express Agency, Inc.,
interested party.
Edwin G. Wilcox, for Oakland Chamber of Commerce.
Wallace K. Downey, for Motor Freight Terminal
Company and for Besone Motor Express, protestants.
Sanborn & Roehl, and Frank B. Austin for Valley Motor
Lines, Inc., and for Valley Express Co.,
protestants.
H. Frasher, for E. Frasher Truck Line and for
Fortier Brothers, protestants.
W. R. Holmes, for Bekins Van & Storage Co, protestant.
Edwin G. Wilcox and Charles G. Adams, Intervenor on
behalf of both applicants for Berkeley Chamber
of Commerce.
W. S. Johnson, for E. Frasher Truck Line, Valley Motor
Lines, Inc. and Valley Express Company, as
protestants. Also for G.W.Cobb, doing business
as Triangle Transfer, C.L. and G.E. Fortier,
doing business as Fortier Brothers, and Besone
Motor Express.

Harris, Commissioner -

O P I N I O N

In this application the Santa Fe Transportation Company asks for a certificate of convenience and necessity to operate motor trucks upon public highways for the distribution of railroad traffic between the railroad stations of The Atchison, Topeka & Santa Fe Railway Company between Fresno, Porterville and intermediate points on the routes shown on Amended Exhibit "B" and upon operating schedules shown on Exhibit 17, such traffic to consist of less than carload freight and express as now transported by rail between such points.

This application was heard and submitted prior to May 21, 1934, on which date the submission was set aside and the proceeding reopened for further hearing. On May 31st further hearing having been had the matter was again submitted, subject to the filing of briefs, the last of which was filed on June 30th.

The purpose of the application is to provide a more expeditious service for the freight and express above referred to and to effect economies in operation. At the present time this service is being entirely performed by rail.

The charge to be made by applicant for this service will be fixed by contract or contracts between applicant and the rail carrier involved on a basis compensatory to applicant, copies of such contract or contracts to be filed with this Commission.

The applicant is a subsidiary of The Atchison, Topeka & Santa Fe Railway Company and is a California corporation. The Atchison, Topeka & Santa Fe Railway Company is a foreign corporation.

Several protestants appeared, including a number of certificated highway transportation companies operating in the territory proposed to be served by applicant.

Protestants' main contentions are that this Commission has not jurisdiction to grant the application and that public convenience and necessity do not require the service proposed by applicant.

The first of these contentions has heretofore been considered and disposed of by this Commission adversely to protestant's contention.

Application of Walkup Dravase Company, 32 C.R.C. 246; in re Morehart, 32 C.R.C. 65; and Application of Coast Truck Line, 36 C.R.C. 856; Application of Howard, 38 C.R.C. 240; Application of Pacific Motor Transport Co., Decision No.26261, 38 C.R.C. p.289.

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We come now to the matter of convenience and necessity. The purpose of this application is to provide a means by which an existing service may be improved and economies effected.

Various exhibits introduced by applicant set forth the improvements proposed. The following quotation from applicant's brief indicates clearly what these improvements are:

"Without going into undue detail these exhibits show the present existing rail service and the improvements that will be made therein if the applicant is permitted to handle the business. For instance, Exhibit 15 shows that while business from San Francisco and Oakland is delivered at stations of Del Rey, Parlier, Reedley, North Dinuba, Orange Cove, Cutler, Visalia and Tulare, on the first day out of San Francisco bay points, that it required an additional day to deliver such freight to Exeter, Lindsay, and Porterville, and that all business from Sacramento or Stockton destined to points between Fresno and Porterville now require two days to make delivery, whereas if the truck can run from Fresno to Porterville, all deliveries will be made on the first day after receipt at San Francisco bay points, Sacramento, and Stockton, and in addition thereto, the operation of the truck will effectuate delivery at an earlier hour than is now possible at the points between Fresno and Tulare. It would seem clear, therefore, that the service would be a benefit to the shippers from San Francisco bay points, Sacramento and Stockton, and to the consignees between Fresno and Porterville, because then without any additional expense and at a saving to The Atchison, Topeka and Santa Fe Railway Company, deliveries could be made some 24 hours sooner than is now possible under existing railroad schedules."

That the improvement proposed is desired by a large part of the public was amply proven at the hearing. Testimony to that effect was given by many witnesses.

There are over three hundred patrons receiving freight by way of The Atchison, Topeka & Santa Fe Railway Company who will be benefited. The total weight per month of the shipments involved is over 240,000 pounds. The estimated cost of the improved service will be between \$5,000.00 and \$6,000.00 per year. The saving by reduction of rail costs will be \$11,865.72 per year.

The granting of this application will permit the use by the existing rail carriers of an auxiliary truck service for the purpose of expediting and improving the rail service. Similar service has been authorized in lieu of train movements in a number of like instances because of the benefit to the public. (Decisions No.26260, 26261 and 26262).

At the first hearing the protesting certificated truck lines offered to contract with applicant for the performance of the services for which it asks a certificate.

The hearing was reopened for the purpose of enabling said protestants to make a definite proposal.

The applicant proposes to distribute its l.c.l. freight out of Fresno to fourteen (14) points, all being railroad freight depots now being served by it by rail.

Of these points, three, Del Rey, Parlier and Reedley are now served by protestants Fortier Brothers, six, North Dinuba, Orosi, Orange Cove, Sultana, Cutler and Visalia are now served by protestant, Valley Motor Lines; one, Tulare, is now served by E. Frasher Truck Line; three, Exeter, Lindsay and Porterville, are now served by Motor Freight Terminal Company; one, Lone Star is served by none of protestants.

In all, contracts will have to be made with four different truck lines.

If applicant performs the service itself, it will need one truck and trailer.

At the present time these truck lines have capacity for the freight proposed to be covered by the contracts.

The offer of protestants was to haul for the railroad at the rate of 15 cents per cwt. covering all points served by protesting truck lines on schedules substantially identical with those proposed by applicant, the trucks to be operated under the names of the truck companies and the freight to be carried with

their own freight without any segregation and not as originally suggested under seal. The drivers of the trucks are to be employed and paid by the truck lines and are to assist in loading and unloading.

The proposal was for separate contracts with each truck line, or the truck lines and applicant would organize a corporation with five directors, two to be appointed by applicant, two by the truck lines and one by the above four to be selected by them as an impartial outsider. This corporation "could contract with the truck lines and in turn contract with the rail carrier." It is not "to take over the franchises and operate all the carriers in that territory." It "was merely to handle the contract for both the truck lines and the rail carriers," * * * an "intermediary contracting company" * * * "the idea being that if any difficulties come up for any decisions to be made in regard to leaving time and that, the rail carriers would have representation on this board along with the truck lines which should enable them to handle the thing properly."

This proposal was not satisfactory to applicant which had many reasons for rejecting it.

It was urged that some of the protestants "are not confined to movement of traffic within the local zone of operations" but "are interested also in the movement of long haul highway traffic competitive with traffic moved long distances by The Atchison, Topeka and Santa Fe Railway Company as to which truck distribution is merely incidental."

The sorting out of freight for and dealing with four truck companies was objected to as cumbersome and difficult in comparison with the use by applicant of one truck to accomplish the same service.

The situation is very different from that presented in the Santa Barbara - Gaviota case, 39 C.R.C. 193, in that among other things the carriers in that case were not first given the opportunity to contract before the decision of the commission was made.

The carriers having had the opportunity and having failed to contract, the only alternative is to grant the certificate asked for.

Santa Fe Transportation 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.

The following findings and order are recommended:

ORDER

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FINDS AND DECLARES that public convenience and necessity require the operation by Santa Fe Transportation Company of an automobile truck service between the railway stations located between Fresno, Porterville and intermediate points located on the lines of The Atchison, Topeka and Santa Fe Railway Company and over the routes as set forth in amended Exhibit "B", such service to be limited to the transportation of ~~such~~ freight as may have been previously consigned for transportation by rail and which may be delivered to the applicant by The Atchison, Topeka and Santa Fe Railway Company or other rail carrier operating between said points 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

Fresno	Cutler	
Del Rey	Visalia	
Parlier	Tulare	
Reedley	Exeter	
N. Dinuba	Lindsay	
Orange Cove	Porterville,	and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such as servibe be and the same hereby is granted to Santa Fe Transportation 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 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 (5) 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.

6. The certificate herein granted does not authorize applicant to directly or indirectly perform a pickup and/or delivery service at the points to be served.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

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.

Dated at San Francisco, California, this 30th day of July, 1934.

C. C. Henry
Leon Whitman

M. J. Carr
M. B. Harris

COMMISSIONERS.