

Decision No. 27235

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 by
motor truck of freight and express between
railroad stations of Southern Pacific
Company and/or Visalia Electric Railroad
Company and/or Sunset Railway Company,
southeast of Fresno, and in the vicinity
of Tulare and of Bakersfield.)
Application
No. 19062

ORIGINAL

E. J. Foulds and A. A. Jones, for applicant.
E. T. Lucey and Berne Levy, for interested parties.
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
Company, protestants.
H. Frasher, for H. Frasher Truck Line and for
Fortier Bros., protestants.
W. R. Holmes, for Bekins Van & Storage Co.,
protestant.
Edwin G. Wilcox and Charles G. Adams, Interveners
on behalf of both applicants, for Berkeley
Chamber of Commerce.
W. S. Johnson, for H. 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 Pacific Motor Trucking 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 Southern Pacific Company, Visalia Electric Railroad Company and Sunset Railway Company, southeast of Fresno and in the vicinity of Tulare and of Bakersfield on the several routes shown on revised Exhibit "B" and upon the operating schedules shown on the revised

Exhibit "A", such traffic to consist of less than carload freight and express as now transported by rail between such points by said companies.

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 primary object of the application is to adopt Fresno, Tulare and Bakersfield as distributing terminals and to transport less than carload freight and express over the highways to and from the other railway stations set forth in said revised Exhibits "A" and "B".

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 performed entirely by rail.

The charge to be made by applicant for this service will be fixed by contract or contracts between applicant and said rail carriers 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 Southern Pacific Company and is a California corporation. The Southern Pacific 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.

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

Application of Walkup Drayage 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., Dec. 26261 - 38 C.R.C. p. 889.

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.

Exhibits 2, 3 and 4 introduced by applicant set forth the improvements proposed. Space will not permit a full statement thereof. As an illustration, the present train service from Fresno to Visalia requires 18 hours, freight being available at Visalia at noon, the proposed service requires 14 hours, 35 minutes, freight being available at Visalia at the more convenient hour of 8:35 in the morning; present train service from Fresno to Porterville now requires 36 hours, the proposed service will require 16 hours, 25 minutes, freight being available in both cases in the morning; the present train service from San Francisco to Visalia and Lindsay requires from 6:00 p.m., to 12:00 M. on the next day, at Visalia and 3:00 p.m. at Lindsay. The proposed service will require from 6:00 p.m., to 8:35 the next morning at Visalia, and 9:45 the next morning at Lindsay. The present train service from Los Angeles to Maricopa now requires 66 hours, 30 minutes. The proposed truck service will require 14 hours.

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 over thirty (30) witnesses, among them being H. R. Brashear, Traffic Manager of the Los Angeles

Chamber of Commerce, R. S. Sawyer, Traffic Manager of the Associated Jobbers and Manufacturers of Los Angeles; Edwin G. Wilcox, Manager of the Traffic Department of the Oakland Chamber of Commerce; D. D. Lyon, Secretary of the Reedley Chamber of Commerce, W. C. Stone, Traffic Manager of the Sacramento Chamber of Commerce, and shipper witnesses from San Francisco, Los Angeles and several of the valley points involved.

There are 1,683 patrons of the lines involved who will be benefited. The total number of shipments by them per month averages 3,912, the total weight being 1,219,727 pounds. The estimated cost of the improved service will be \$21,797.00 per year, the saving by reduction of rail costs will be \$23,160.00 per year. The estimated cost required to maintain a rail service equal to the proposed truck service is \$110,514.00 per year.

Protestants contend that the granting of the certificate here applied for will create an additional competitor in the field and will tend to impair the existing truck service by diverting its traffic to the applicant.

The granting of this application will not place a new competitor in the field. It will permit the use by the existing rail carrier of an auxiliary truck service for the purpose of expediting and improving the rail service.

There is nothing new in the coordination proposed in this application. Some of the similar coordinated operations of the Southern Pacific lines (no reference being herein made to similar operations by other lines) under certificates of public convenience and necessity granted by the commission are as follows:

1. In the territory south and west of Fresno, and as far as Coalinga, under Application No.18699.
2. In the territory between Sacramento and Placerville, under Application No.18727.
3. Between Surf, Lompoc and White Hills, under Application No.18752.
4. Between Brawley and Westmoreland, under Application No.18861.
5. Between Martinez and San Ramon, under Application No.18871.

6. Between Marysville and Oroville, Application No.18880.
7. Between Colusa and Williams, under Application No.18882.
8. Between Esparto and Rumsey, under Application No.18982.
9. Between San Rafael and Point Reyes, under Application No.18651.
10. Between Stockton and Martell, under Application No.18010.
11. Between Watsonville Junction, Monterey and Salinas, under Applications Nos.18315 and 16228.
12. Between Felton and Boulder Creek, under Application No.18862.
13. Between Los Gatos and Mayfield, under Application No.18758.
14. Between San Jose, Los Gatos, Santa Cruz and Capitola, under Application No.16626.

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.

Before stating the proposal it will be advisable to relate some of the pertinent facts.

The applicant proposes to distribute its l.c.l. freight to 39 points, all being freight depots now served by it by rail.

Out of Fresno it proposes to serve thirteen points, four of which, Ivanhoe, Woodlake, Lemon Cove and Lindcove are not served by protestants and cannot be covered by their contract.

Out of Tulare it proposes to serve twelve points, three of which, Tipton, Pixley and Earlimart are not served by protestants and cannot be covered by their contract.

Out of Bakersfield it proposes to serve fifteen points, five of which, Stevens, Magunden, Edison, Arvin and Lamont are not served by protestants and cannot be covered by their contract.

These twelve points not covered by the certificates of the protestants are not of major importance but are all railway stations and delivery points.

Out of Fresno contracts must be made with three truck lines: Triangle Express, Valley Motor Lines and Fortier Brothers.

Out of Tulare contracts must be made with two lines, Motor Freight Terminal, and E. Frasher Truck Line.

Out of Bakersfield contracts must be made with three lines, Besone Motor Express, Bakersfield, Wasco-Shafter Auto Freight Line, and Motor Freight Terminal Company. In all, contracts must be made with seven different truck lines. 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 Southern Pacific as to which truck distribution is merely incidental."

The following was also urged:

"There is another controlling reason why we could not employ local franchised operators to perform our service in this territory. There is no one operator serving the entire group of stations which we must serve out of each of the three terminals involved. The Motor Freight Terminal Company, a competitor of ours for the long haul out of Los Angeles, has the right only to serve a limited number of points which must be reached from each of our terminals. The Valley Motor Lines, also a competitor for our long haul out of San Francisco, has the right only to serve a limited number of points; other local lines serve still other individual points; some points which we must serve are not reached by any certificated truck line. Almost every point of major importance in the territory is reached by one franchised truck line or another, but Southern Pacific must serve all of its stations in the territory and cannot discriminate against those of lesser importance if the expedited service is given to the more important stations. If we were to employ the numerous truck operators to carry our traffic to the respective points which we serve, we would still be left with the obligation of serving a number of points not reached by them by securing franchises for our own trucking company. If we were compelled to serve the less important stations by our own trucking company, and to employ the respective local lines for the more important points, we would be employing our competitors to handle the cream of the traffic which would support our expedited service, leaving us to handle ourselves the local points in which the local truck lines apparently are not sufficiently interested to secure a franchise. In other words, we would be turning over to them the profitable business, leaving with us the obligation to serve the less profitable sections. Any such plan would be wholly unworkable and unjustifiable."

The situation here 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.

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.

The following findings and order are recommended:

O R D E R

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY FINDS AND DECLARES 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 lines of Southern Pacific Company, the Visalia Electric Railroad Company and the Sunset Railway Company, southeast of Fresno and in the vicinity of Tulare and Bakersfield and over the routes as set forth in revised Exhibit "E", such service to be limited to the transportation of such freight as may have been previously consigned for transportation over the line of either of said companies and which may be delivered to the applicant by either of said companies at the railroad freight stations designated below and to be redelivered by the applicant at another of said freight stations, as routed and set forth as follows:

Route No.1 - Bakersfield area

Bakersfield
Gosford
Taft
Maricopa
Fellows
Mc Kittrick
Buttonwillow
Bowerbank
Rio Bravo
Stevens
Bakersfield

Route No.1 - Bakersfield area (cont'd)

Bakersfield
Magunden
Edison
Arvin
Lamont

Bakersfield
Seguro
Oil City

Route No.2 - Tulare area

Tulare
Visalia
Goshen Jct.
Tulare
Tipton
Pixley
Earlimart
Delano
Mc Farland
Famoso
Richgrove
Ducor
Terra Bella

Terra Bella
Ducor
Richgrove
Jovista
Delano
Earlimart
Pixley
Tipton
Tulare

Route No.3 - Fresno area

Fresno
Sanger
Reedley
Dinuba
Ivanhoe
Woodlake
Lemoncove
Lindcove
Exeter

Exeter
Farmersville
Visalia
Ivanhoe
Dinuba
Reedley
Sanger
Fresno

Route No.4 - Fresno area

Fresno
Goshen Jct.
Visalia
Farmersville
Exeter
Lindsay
Strathmore
Porterville

Porterville
Strathmore
Lindsay
Tulare
Fresno

provided, there shall be no service rendered between stations on Route No.1 and stations on Routes Nos.2,3 and 4, and, provided further that applicant shall use the portions of routes shown in mauve on said Exhibit "B" , attached to the application, only for operating convenience and not for pickup or delivery of property.

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 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. Seavey
Tom O'Connell
M. A. Carr
W. B. Lavin
COMMISSIONERS.