

Decision No. 28287

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
NEVADA COUNTY TRUCKING COMPANY, a
corporation, and PACIFIC MOTOR TRUCK-
ING COMPANY, a corporation, doing
business under the name of Nevada
Pacific Trucking Agency, for a certifi-
cate of public convenience and necessity
authorizing the transportation of
property by said Agency by motor truck
between Sacramento and Nevada City and
intermediate points.

Application No. 19245.
(Amended)

E. J. Foulds and A. A. Jones, for Applicant in
Applications Nos. 19245 and 19746; also for
Protestants in Application No. 19693.

Douglas Brookman and Lynne Kelly, for Nevada County
Trucking Company and Nevada-Pacific Trucking
Agency, Applicants in Application No. 19245; and
for Nevada County Narrow Gauge Railroad Company,
Intervener in support of Application No. 19245;
and for Protestants Nevada County Trucking Company
and Nevada Pacific Trucking Agency, and Nevada
County Narrow Gauge Railroad Company in Application
No. 19693.

Sanborn & Roehl, by A. B. Roehl, for United Motor
Transport Company, Applicant in Application No.
19693, and Protestant in Applications Nos. 19245
and 19746.

Edwin G. Wilcox, for Oakland Chamber of Commerce in
Application No. 19245.

Eal Romington, for the San Francisco Chamber of
Commerce in Application No. 19245.

Nilon, Hennessy & Kelly, by Lynne Kelly, for Empire
Star Mines Company, Ltd., in support of Applications
Nos. 19245 and 19746, and protesting Application
No. 19693.

E. H. Armstrong, for Applicant in Application No. 19693;
and Protestant in Applications Nos. 19746 and 19245.

T. L. Chamberlain, on behalf of certain individuals
named in Transcript, Protestants in Application
No. 19245.

W. E. Wright, City Attorney of the City of Nevada,
protesting Application No. 19693.

W. E. Griffin, on behalf of the Nevada City Chamber of Commerce, protesting Application No. 19693, and in support of Applications Nos. 19245 and 19746.

McCutchen, Olney, Mannon & Greene, by F. W. Mielke, for The River Lines, in support of Application No. 19693 and protesting Applications Nos. 19245 and 19746.

W. G. Stone, for Sacramento Chamber of Commerce, as their interests may appear in all three applications.

Lynne Kelly and Douglas Brookman, for Colfax Fruit Growers' Association, in support of Applications Nos. 19245 and 19746 and protesting Application No. 19693.

Lynne Kelly and Douglas Brookman, for Empire Star Mines, Ltd., in support of Applications Nos. 19245 and 19746 and protesting Application No. 19693.

BY THE COMMISSION:

O P I N I O N

The above application was consolidated with Applications Nos. 19746 and 19693 for hearing but not for decision.

In Application No. 19245 Nevada County Trucking Company, (subsidiary of Nevada County Narrow Gauge Railroad Company) and Pacific Motor Trucking Company, (subsidiary of Southern Pacific Company) ask for a certificate of public convenience and necessity to establish motor truck service for the transportation of freight and express between Sacramento and Nevada City and intermediate points. Applicants request that said certificate be issued in the name of Nevada Pacific Trucking Agency, which is a joint agency for the two applicants.

Applicants propose to operate motor trucks upon the public highway for the above purpose between the points above named and as set forth in the time schedule attached to the application as Exhibit "B" and upon routes shown in Exhibit "C", serving only the railroad stations of the Southern Pacific between Sacramento and Auburn, inclusive, and serving all points on the highway between Auburn and Nevada City, including the latter but not the former, the traffic handled by them to consist of freight and express in the custody of the railroads and

railroad express companies directly or indirectly serving said railroad stations and points. Applicants also propose to provide store-door, pick-up and delivery service in the vicinity of Southern Pacific stations between Sacramento and Auburn, inclusive, now or hereafter provided for in the tariffs of said railroad and express companies.

The rates to be charged by applicants for their services to carriers whose traffic will move over their lines, will be fixed by contract from time to time between applicants and Southern Pacific Company, Nevada County Narrow Gauge Railroad Company, Railway Express Agency, Inc., Pacific Motor Transport Company, and any other carrier whose traffic will be handled by applicants on a basis compensatory to applicants, copies of such contracts to be filed with the Commission and the rates at which the services of applicants can be availed of by the general public are those of the several carriers whose traffic is to be handled by applicants.

In Application No. 19746, Pacific Motor Transport Company asks for a certificate of public convenience and necessity to extend its express service over the line of Nevada County Narrow Gauge Railroad Company between Colfax and Nevada City and intermediate points, and also over the line of the Nevada Pacific Trucking Agency between Sacramento and Nevada City and intermediate points, if and when said Nevada Pacific Trucking Agency receives authority to operate under Application No. 19245.

In Application No. 19693 the United Motor Transport Lines, Inc. asks for a certificate of convenience and necessity to operate an auto truck line for the transportation of property as a common carrier between Auburn and Grass Valley and Nevada City and intermediate points as an extension of its existing operative right between Sacramento and Auburn and intermediate points.

Application No. 19245 was filed December 23, 1933. An amended application was filed December 1, 1934. The original application asked for the issuance of a certificate to the two applicants. The amended

application asked that the certificate be issued to Nevada Pacific Trucking Agency, a joint agency for the two applicants. In all other respects the original and amended applications are substantially identical.

Application No. 19693 (United Motor Transport Lines, Inc.) was filed November 8, 1934.

Application No. 19746 (Pacific Motor Transport Company) was filed December 11, 1934.

The several applications will be given separate decisions in the order of the filing.

In Application No. 19245 (Nevada Pacific Trucking Agency) the Oakland Chamber of Commerce, the San Francisco Chamber of Commerce, the Empire Star Mines Company, Ltd., the Nevada City Chamber of Commerce and Colfax Fruit Growers Association appeared as interveners in behalf of applicants. Protesting the application there appeared United Motor Transport Company (applicant in Application No. 19693), T. L. Chamberlain on behalf of about 30 shippers and receivers of freight at points in Placer County between Sacramento and Auburn, and The River Lines.

As above stated, applicants asked that the certificate, if granted, be issued to Nevada Pacific Trucking Agency as their representative. The contract attached to the amended application as Exhibit "A" provides for the organization and operation of the agency. The purpose is to place the responsibility of the service in a single joint agency. The plan is patterned after one approved by this Commission in the proceeding entitled "Application of Los Angeles Railway Corporation, a corporation, and Pacific Electric Railway Company, a corporation, for approval of an agreement dated August 15, 1923, contemplating the joint operation of motor bus service, etc." (24 C.R.C. 137).

To appreciate the issues involved, it is necessary to keep in mind the operations now conducted in the territory involved by

applicants and the protestant United Motor Transport Lines, Inc., and also operations proposed by each of them.

The Southern Pacific operates on rails from San Francisco and Oakland to Sacramento, Auburn, Colfax and beyond, and the Nevada County Narrow Gauge Railroad Company operates on rails from Colfax to Grass Valley and Nevada City. Rail freight in or out of the Grass Valley and Nevada City territory is transferred at Colfax from one rail line to the other. Between Sacramento, Grass Valley and Nevada City, an overnight rail service is now in operation. Between San Francisco and Oakland and Grass Valley and Nevada City, there is a delay of at least a day owing to the fact that the freight trains miss connection at Sacramento, requiring the freight to lay over an extra day.

Applicants propose to operate trucks on the highway in coordination with the rails for l.c.l. freight from Sacramento, to Auburn, Grass Valley, Nevada City and intermediate points. The purpose is to quicken deliveries. The trucks will leave Sacramento at 8:00 a.m. and will arrive at Nevada City at 11:30 a.m., and on return will leave Nevada City at 1:00 p.m. and arrive at Sacramento at 4:00 p.m.

By this operation of trucks, shipments to the Grass Valley and Nevada City section will be given an overnight service so that shippers in San Francisco and Oakland will deliver freight to the rail carriers up to about 6:00 p.m. and have it delivered store-door in the Grass Valley, Nevada City section the next morning.

Exhibit No. 1 is a chart showing the present service and the proposed service from San Francisco and Oakland to the Grass Valley section. Without going into detail, this chart shows the present rail service ranging from 91 to 43 hours and the proposed coordinated service ranging from 40 hours and 45 minutes to 16 hours and 45 minutes.

Exhibit No. 2 is a chart showing the present service and the proposed service for freight originating at Sacramento. The present

service ranges from 67 hours to 19 hours and the proposed truck service ranges from 39 hours and 30 minutes to 15 hours and 30 minutes.

Authority is also sought to serve with these trucks the resorts, gas stations and farms along the highway between Auburn and Nevada City, there being no lawful common carrier service by truck along this highway between these points.

Also these trucks will carry l.c.l. freight moving over the Southern Pacific rails to and from points east of Sacramento to and including Auburn, in those cases where the train service is too slow or infrequent to meet the requirements of the shipping public. The train service between these points is now tri-weekly.

The cost of the proposed trucking service is estimated at \$10,712. annually. There will be a saving in rail costs of \$3,482. annually. The net cost of the trucking operation will therefore be \$7,230. a year. To furnish wholly by rail the proposed expedited overnight service would cost approximately \$36,000. a year, a prohibitive amount.

The granting of this application would provide overnight service for the Grass Valley, Nevada City section, and the granting of Application No. 19746 would have the practical effect of providing store-door, pick-up and delivery in the said section, a service which it does not now enjoy.

The present and proposed operations of United Motor Transport Lines, Inc. have been stated in part above. Its time schedule is substantially the same as that proposed by applicants. The United Motor Transport has joint rates with The River Lines from San Francisco and Oakland to Sacramento and will thus under its proposal provide an overnight service from those points to the Grass Valley-Nevada City district. The present service of United Motor Transport between Sacramento and Auburn is adequate.

Protestant, United Motor Transport Lines, Inc., states the issue as follows:

"To summarize, then, the Nevada Pacific Trucking Agency being an Agency of the Southern Pacific Company, and the Nevada County Narrow Gauge Railroad seeks authority to enter the trucking business as a certificated carrier between Sacramento and Nevada City and all intermediate points including that territory between Sacramento and Auburn already served by the United Motor Lines, Incorporated, and the Pacific Motor Transport Company, which at present operates an express service over the lines of the Southern Pacific Company seeks authority to extend its operations over the lines of the Nevada County Narrow Gauge Railroad and the lines of the Nevada Pacific Trucking Agency, if and when that Agency is authorized to operate trucks between Sacramento and Nevada City and intermediate points."

There were a number of public witnesses favoring the application. Among them was E. G. Wilcox, representing the Oakland Chamber of Commerce, who testified that his Chamber of Commerce included San Leandro, Hayward, Emeryville, Berkeley and Alameda; Hal Remington, representing the San Francisco Chamber of Commerce; Albert Law, a fruit shipper and hardware merchant at Loomis; Jess F. Noia, a merchant at Newcastle; John Sherpak, a merchant at Rocklin; Wendell Robie, in business at Auburn and Nevada City.

Much of the testimony related to the importance of the narrow gauge railroad to the communities it serves and opposed the granting to a competitor of a certificate authorizing a service which would adversely affect it. Among these witnesses were Robert G. Hall of the Bradley mining interests; William Durbrow, Manager of the Nevada Irrigation District; T. Garvin Mitchell of the Colfax Fruit Growers Association.⁽¹⁾

1. It was stipulated that the following witnesses would testify to the above:

NEVADA CITY WITNESSES

<u>Name</u>	<u>Business</u>
R. R. Coyne	Foundry
S. E. Leiter	Dry Goods
Bolton's	Variety Store
J. F. Coley	Confectionery
Thos. Jennings	Shoes
Dickerman Drug Store	Drugs
A. M. Holmes (2 places)	Undertaker
Alpha Hardware Co. (2)	Hardware
J. J. Jackson	Grocer

GRASS VALLEY WITNESSES

H. C. Pengelly	Shoes
P. Andretti	Lumber
Bennetts Howard	Men's Furnishings
G. Lindstrom	Variety Store
Jones Drug Store	Drug Store
J. C. Penny	Dry Goods
Golden Rule Stores, Inc.	Dry Goods
A. B. Snyder	Electric Equipment
Mrs. H. K. Conway	Ladies Wearing Apparel
Martin, J. G.	Bakery

The issue involved in this case is not new to this Commission. In denying Schneider Brothers (now United Motor Transport Company, Inc.) authority to extend its line to Grass Valley and Nevada City, in Decision No. 21123 in 33, C.R.C. Page 88, dated May 20, 1929, this Commission said:

"In arriving at this conclusion the fullest consideration has been given to the situation confronting the rail line. The maintenance of this line is of vast importance to the territory it serves, and its tonnage should not be impaired. Faced with an abandonment of the rail line, consequent upon an order of this Commission permitting it to discontinue because of continuously shrinking receipts, loyal citizens of Grass Valley and Nevada City assumed the burden of operating it, sensing the value of the rail service to the communities between which it operates and the territory it serves. In 1928, due undoubtedly to the efforts of the community committee which took over the line and the merchants who pledged their support, the rail line showed a net operating income of \$958.07. Previous years showed heavy losses. To grant authority to Schneider Bros. to extend their service to Higgins Corner instead of to Forest Springs Station will, in my opinion, largely satisfy the transportation needs of the territory involved without making any inroads upon the tonnage available to the rail line."

Pursuant to the foregoing order, Schneider Brothers extended their operations from Auburn to Higgins Corner, California, a distance of approximately twelve miles northerly from Auburn and over the public highway between Auburn and Grass Valley. Thereafter, this extension of service proved unprofitable and the same had to be abandoned, said abandonment being authorized by C.R.C. Decision No. 22575 in Application No. 16507, dated June 24, 1930.

As late as November 6, 1933, in the application of Eck and Bennetts for a certificate to operate a freight truck service between Sacramento and Grass Valley and Nevada City, in Decision No. 26489 this Commission denied their application and said:

"Grass Valley and Nevada City have for many years enjoyed the benefits of their extensive mining industries and the record shows that the Narrow Gauge Railroad has rendered indispensable services in marketing the ore products of these mines, as well as furnishing efficient and necessary transportation for the delivery of numerous supplies both in carload and L.C.L. shipments, such as heavy machinery, mining timbers, iron and steel articles, lumber, hay, cereal, sugar, gold and general merchandise. It was shown that these various commodities move at low joint and blanket rates and such a service cannot be replaced by rates equally low over the proposed truck line." * * *

"After a careful review of all the evidence in this proceeding, we are of the opinion and find as a fact that the public convenience and necessity do not require the establishment of the truck service proposed by applicants. The evidence shows that the existing carriers are adequately serving the territory involved, and while the proposed truck service might meet the demands of certain retail shippers and other receivers of freight such an additional service would no doubt intensify present competitive conditions and seriously impair the service of the protesting carriers particularly the Narrow Gauge Railroad who are meeting satisfactorily the demands of most of the shippers and merchants."

Scrutinizing the records in these previous applications and then examining the record herein, there clearly appears a steadily growing demand for an expedited service to Grass Valley and Nevada City. There is no longer any substantial denial that public convenience and necessity exists and warrants the inauguration of such service.

The two issues involved herein are:

First, which of the two applicants, Nevada Pacific Trucking Agency, or United Motor Transport Lines, Inc., should have the certificate to perform said service?

Secondly, consistent with public interest, to what extent should such certificate be limited?

The record impels two outstanding conclusions. First, the Nevada County Narrow Gauge Railroad Company is rendering a vital and necessary service to the communities of Grass Valley and Nevada City. The perpetuation of this railroad is a matter of public interest. Secondly, United Motor Transport Lines, Inc., is performing a necessary and adequate service between and including Sacramento and Auburn. Said trucking company operates through joint rates with The River Lines and affords an expedited movement of freight between San Francisco and Oakland on the one hand, and Sacramento and Auburn on the other. Similarly, the preservation of this service is a matter of public interest. There is room and need for both carriers.

Sound regulation supports and directs a true course for public interest. This course must afford the greatest advantages and the best results for those served. Those who are served suffer when

the one serving is crippled. Hence, sound regulation gravitates along a course compatible to the welfare of the utility that is rendering a vital service, a necessary service, an adequate service.

If this Commission were to grant the certificate sought by United Motor Transport Lines, Inc., as proposed in Application No. 19593, the Nevada Narrow Gauge Railroad Company would be in grave peril. Such a predicament should be avoided if possible.

If this Commission were to permit the Nevada Pacific Trucking Agency to parallel or substantially duplicate the service of United Motor Transport Lines, Inc., the latter carrier would similarly be in grave peril. Correspondingly, this predicament should be avoided if possible.

It therefore follows that a coordinated rail and truck service should be permitted the applicant herein, Nevada Pacific Trucking Agency, for the transportation of freight and express, consisting of a direct daily auto truck service between Sacramento on the one hand, and points northerly from Auburn and including Grass Valley and Nevada City on the other hand, and between Auburn on the one hand and Nevada City on the other hand, both places being included; provided that such service shall not be extended to, and shall not affect, directly or indirectly, points between Sacramento and Auburn. It appears that the inauguration of such a service will at once make possible definite economies in the operation of the Nevada County Narrow Gauge Railroad Company, and will afford the territory between Auburn and Nevada City inclusively an overnight freight service which is needed, and which would appear to be adequate.

Nevada County Trucking Company, Pacific Motor Trucking Company and Nevada Pacific Trucking Agency are 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:

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY ADOPTS AS ITS FINDINGS the statement of facts and findings contained in the above Opinion, and, in addition thereto, declares that public convenience and necessity require the operation by Nevada Pacific Trucking Agency of an automobile truck service, for the transportation of freight and express, consisting of a direct daily service between Sacramento on the one hand, and points northerly from Auburn and including Grass Valley and Nevada City on the other hand, and between Auburn on the one hand and Nevada City on the other, both places being included; provided that such service shall not be extended to, and shall not affect, directly or indirectly, points between Sacramento and Auburn.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such a service be and the same hereby is granted to Nevada Pacific 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 in so far 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.

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 21st day of October, 1935.

Leon Whitely

W. B. Lewis

Matthew Brown

Frank Deulin

Commissioners.

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I concur in the order.

There can be no question that public convenience and necessity demand, and the people of Grass Valley and Nevada City are entitled to, an improved and expedited freight service. The authority to render this service is sought (1) by what may be termed the railroad group, the most conspicuous element of which is the Nevada County Narrow Gauge Railroad which is now being conducted and kept alive as a community enterprise, and (2) by a certificated carrier which has long rendered a needed and satisfactory service between Sacramento and Auburn.

It is by no means clear that the service may or will be given by the railroad group, unless it is permitted to recoup for its added expense by drawing from the traffic now handled by the certificated carrier between Sacramento and Auburn. Whether this certificated carrier could survive such a loss is doubtful. On the other hand, to allow the certificated carrier to perform the service would seriously injure, if not destroy, the Narrow Gauge Railroad.

The order here offers the Grass Valley and Nevada City people the service to which they are entitled. It protects the certificated carrier in its existing business. It gives recognition to the strong equity of the Narrow Gauge Railroad. If the railroad group will accept a certificate under the limitations attached, the disposition of these cases will represent a happy solution of a most difficult situation. The record furnishes no assurance that it will. If it refuses, the Commission will be confronted squarely with the necessity and the duty of choosing between the two applicants, realizing that whichever choice it makes will work a grave injury to the applicant not chosen. Until forced to make this choice, it is unnecessary to discuss the various elements, conflicting and offsetting in nature, which will have to be weighed to reach such a selection.

M. J. Carr

Commissioner.

While I do not concur in all respects in the views expressed in the main opinion, I do agree that there is a need for an improved and expedited freight service to Grass Valley and Nevada City and that the applicant herein should be certificated to render that service.

I therefore concur in the order.

M. B. Harris
Commissioner.