

Decision No. 28283

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of UNITED MOTOR TRANSPORT LINES, INC., for a certificate of public convenience and necessity to operate an auto-truck line for the transportation of property as a common carrier, for compensation, between Auburn and Nevada City, and intermediate points, via Grass Valley, California, in connection with and as an extension and enlargement of the service now being rendered by applicant between Sacramento and Auburn, California, and intermediate points.

ORIGINAL

Application No. 19693.

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

Milon, 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

Applicant in the above matter 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.

For the purposes of hearing, but not for decision, this application was consolidated with Applications Nos. 19245 and 19746.

In Application No. 19245 the Nevada County Trucking Company, a subsidiary of the Nevada County Narrow Gauge Railroad Company, and Pacific Motor Trucking Company (subsidiary of Southern Pacific Company), ask for a certificate of convenience and necessity to establish motor truck service for the transportation of freight and express to and from the railroad stations between Sacramento and Auburn, and all points on the proposed route between Auburn and Nevada City and intermediate points.

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 those certain intermediate points served by said agency, if and when said Nevada Pacific Trucking Agency receives authority to operate under Application No. 19245.

The Commission has rendered its Opinion in Application No. 19245 and has authorized the issuance of a certificate to the Nevada Pacific Trucking Company. The following excerpts from that Opinion are pertinent here:

"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 Company 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." * * *

"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." * * *

"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)

Nevada City, Nevada City Chamber of Commerce, Colfax Fruit
Star
Growers Association, Empire/Mining Co., Ltd., and Nevada County
Narrow Gauge Railroad Company intervened in support of Applications
Nos. 19245 and 19746 and in opposition to Application No. 19693 and
filed a brief from which we quote as follows:

"All of these interveners have a common interest, namely, the preservation of the Narrow Gauge Railroad which operates between Nevada City and Colfax, a distance of 20½ miles, where it connects with the main line of the Southern Pacific Company. The purpose, among others, of the first two applications above named is to preserve to the Narrow Gauge Railroad Company its earnings from less than carload traffic, which constitutes about 14 per cent of its tonnage and produces about 25 per cent of its revenue. The preservation of this less than carload traffic is essential to the continued existence of the railroad. If this traffic is lost to the railroad, the railroad will have to go out of business entirely. The railroad is vital to the communities it serves. These interveners naturally favor the granting of the two applications which will result in the railroad giving improved service to its less than car traffic and thus allow the railroad to continue to exist."

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

<u>Name</u>	<u>NEVADA CITY WITNESSES</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

	<u>GRASS VALLEY WITNESSES</u>	
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
J. C. Martin		Bakery "

"The granting of the third application, the one filed by United Motor Transport Lines, Inc., will cripple the railroad and force it to fold up. This will follow as a matter of course, by the United Motor Transport Lines, chiseling (we do not use this term offensively) away from the railroad the less than carload business on which the continued life of the railroad depends, without offering an adequate service for the carload traffic of low grade minerals and horticultural products upon which the mining and fruit industries are wholly dependent. In spite of the applicant's protests to the contrary, this is just what the granting of the application of United Transport Lines will do. The country would then be without the railroad which is essential for the heavy annual carload movement of fruit and minerals to Eastern and foreign, as well as local markets. For these reasons the interveners most emphatically protest the granting of Application No. 19693 of United Motor Transport Lines, Inc."

Referring again to the decision in Application No. 19245, we quote as follows:

"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 car-load 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. 19693, the Nevada ^{County} 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 economics 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."

Applicant, United Motor Transport Company, argues that the rates proposed by it in its application are lower than the rail rates now in force and that therefore it should be granted a certificate. Rates are of course subject to constant change. If applicant's proposed rates are later shown to be too low to be reasonable they will be raised. If, on the other hand, the present rail rates are too high to be reasonable they will be reduced:

The following citations from Commission's decisions are applicable:

The mere proposal to make a lower rate than existing rates is not sufficient to show public convenience and necessity for proposed auto truck service, although it may be an element to be considered. Coast Truck Line, 20 C.R.C. 790, 792.

A certificate for auto truck operation cannot be granted solely upon the ground that applicant proposes a rate lower than that charged by existing carriers. Joe Joaquin, 22 C.R.C. 422, 423.

All other things being equal, lower rates in and of themselves are not sufficient to warrant the establishment of a competitive service, the proper remedy being the filing of a complaint against the rates of existing lines rather than the introduction of another truck service. H. E. Holmes. 29 C.R.C. 224, 230.

The Commission must conclude from the foregoing opinion that public interest will be best subserved by granting the certificate hereinabove specified unto Nevada Pacific Trucking Agency and by an order denying the certificate sought herein.

The following findings and order are recommended:

O R D E R

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY ADOPTS AS ITS OWN the findings of fact in the foregoing opinion and in addition thereto declares that public convenience and necessity do not require the issuance of the certificate sought herein.

IT IS HEREBY ORDERED that said application be denied.

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. J. Lane
Frank D. Lane
Commissioners.

I concur in the order. My views are expressed in the
concurring opinion in application no. 19245

-10-

W. J. Lane

I concur in the order

M. B. Lane