

Decision No. 28357

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
PACIFIC INTERURBAN TRANSPORTATION )  
COMPANY for a certificate of public )  
convenience and necessity to operate ) Application No. 20094  
an auto truck service for the trans- )  
portation of freight as a common )  
carrier between Los Angeles, California, )  
and Mojave, California. )

ORIGINAL

- Lewis Clark for Applicant
- H. W. Hobbs for Southern Pacific Company and Pacific Motor Transport Co., Protestants
- E. T. Lucey for The Atchison, Topeka & Santa Fe Railway Company, Protestant
- Edward Stern for Railway Express Agency, Inc., Protestant
- R. V. Hardie for Western Truck Lines, Ltd., Protestant.

BY THE COMMISSION:

O P I N I O N

Applicant is a co-partnership composed of L. and M. S. Ansell, and operates under the fictitious name of Pacific Interurban Transportation Co. By Decision No. 20751 on Application No. 15146 the co-partnership was granted a certificate to establish automotive service for the transportation of property between Los Angeles and Randsburg, Oedick, Atolia, Inn City, Hampton and Johannesburg, and all points intermediate to Mojave and Randsburg, with the restriction that "no service may be rendered at any point between Los Angeles

and Mojave, inclusive of Mojave." This service is made thrice weekly. Applicant now seeks to extend its rights to include Mojave, Fleta, Gloster and Rosamond and a lateral area ten miles on either side of the highway between Rosamond and Mojave. For this service a schedule of six days weekly is proposed.

Public hearings were conducted by Examiner Williams at Los Angeles and Mojave and the matter was submitted upon a stipulation of all carriers affected.

Practically all of applicant's witnesses testified to transportation of mining machinery and supplies between Los Angeles and the area west of the State Highway between Rosamond and Mojave. Applicants between January and July moved many shipments to mines under contract. Being advised such operation might be in violation of law the instant application was filed and included points now served only by rail.

In the area west of the highway the mines on production or under development are:

Golden Queen Mine,  $2\frac{1}{2}$  miles west of highway; receives from Los Angeles 15 tons weekly; employs 200 men.

Pride of Mojave, one-half mile west of highway; 1 to  $1\frac{1}{2}$  tons weekly; employs 40 men.

Burton Bros. Tropic Mine,  $4\frac{1}{2}$  miles west; 5 to 10 tons weekly; employs 60 men.

Other mines approximately the same are Elephant Eagle,  $2\frac{1}{2}$  miles west; and Grey Eagle nearby.

Witnesses from these mines testified to the need of direct truck service from Los Angeles, where the bulk of their orders are placed. There was no testimony that either

Rosamond, Fleta, Closter or Mojave need additional service. Each is served by Southern Pacific, Pacific Motor Transport and Railway Express Agency, Inc., the last named handling large quantities of bullion from the producing mines. Rosamond, Fleta and Closter are non-agency points. Mojave is also served by Santa Fe Railway. There is no proof of any transportation need east of the State highway.

Applicant offered a stipulation at Mojave amending its application "to eliminate therefrom request for certificate to operate auto truck service between Los Angeles, Rosamond, Fleta, Closter and for Mojave, or within one mile radius of the station points thereof." This stipulation was accepted by all protestants and their protests were withdrawn. This stipulation, in effect, withdraws the offer of service to Rosamond, Fleta, Closter and Mojave and the rates to such points as set forth in Exhibit "A" attached to the application. Applicant L. Ansell testified that, in applying rates to the area west of the highway, the Mojave rate would be used. This was not opposed. Applicant therefore will be authorized to file its proposed rates to Mojave, blanketed to all points west of the highway, regardless of whether diversion is made at Mojave or south thereof. The stipulation is consistent with the only public need shown in the record, although as before stated, there is no testimony as to any need west of State highway. The application will be granted, in part, to provide the service needed by mines west of the highway and which service protestants frankly admitted they are not now giving and do not intend to provide. An order accordingly will be made as an extension and enlargement of applicant's existing rights.

L. and M. S. Ansell 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.

O R D E R

A public hearing having been held on the above entitled application, the matters having been duly submitted and the Commission being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation of an automotive truck service for the transportation of property between Los Angeles and the area west of Rosamond, Gloster, Fleta and Mojave, as an extension and enlargement of applicant's rights, as granted by Decision No. 20751, dated February 5, 1929, provided, however, that such service shall not be rendered to nor within one mile of the railroad stations at said Rosamond, Fleta, Gloster and Mojave and that said service shall be confined to points one mile or more west of the State highway between Rosamond and Mojave and not more than ten (10) miles distant therefrom over and along the following route:

Via U.S. Highway No. 99 and State Highway No. 23 between termini and the county roads westward of said State highway, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted to L. and M. S. Amstell, co-partners, operating under the name Pacific Interurban 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 to Mojave in so far as they conform to the certificate herein granted, or rates satisfactory to the Railroad Commission.
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.

IT IS HEREBY FURTHER ORDERED that, except as herein specifically granted, the application in all other respects be denied.

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 12<sup>th</sup> day of November, 1935.

Leon Amstell  
W. H. C. C. C.  
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Commissioners.