

ORIGINAL

Decision No. 28651

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SACRAMENTO-CORNING FREIGHT LINE, LTD., for certificate of public convenience and necessity to operate an auto truck freight service for the transportation of property as a common carrier between Sacramento and Redding and intermediate points.

Application
No. 19,630.

In the Matter of the Application of J. A. GRITSCH, doing business under the firm name and style of OREGON-CALIFORNIA FAST FREIGHT, for an extension of certificate to include Sacramento.

Application
No. 19,870.

In the Matter of the Application of GEORGE W. MULLINS, for a certificate of public convenience and necessity (1) to extend his automotive truck service as a common carrier between Chico and Red Bluff from Sacramento to Redding and intermediate points, excluding therefrom the right to transport property in connection therewith between Sacramento and Chico and intermediate points, and (2) for an order consolidating the proposed automotive truck service with the existing truck service of applicant between Chico and Red Bluff and intermediate points.

Application
No. 19,938.

Thomas O'Hara for Sacramento Corning Freight Lines, Ltd.,
applicant;

Douglas Brookman and Jesse W. Carter for J. A. Gritsch,
applicant;

Harry A. Encell for George W. Mullins, applicant;

W. G. Stone for Sacramento Chamber of Commerce,
interested party;

H. W. Hobbs for Southern Pacific Company and The
Pacific Motor Transport Company, protestants;

Edward Stern for Railway Express Agency, Inc., protestant;
N.D.Pritchett for Order of Railroad Telegraphers, protestants.

BY THE COMMISSION:

OPINION AND ORDER

Applicants herein are now operating freight truck services under certificates duly granted by this Commission. Each seeks to provide freight truck service between Sacramento and Red Bluff and Redding on daily schedules with overnight service. In addition, applicant Gritsch proposes to serve all points between Redding and Dunsmuir, not including Dunsmuir. All the points involved are served by rail by protestants Southern Pacific Company, Pacific Motor Transport Company and Railway Express Agency, Inc.

Public hearings thereon were conducted by Examiner Williams at Redding, Red Bluff, Sacramento and San Francisco.

The application of Sacramento-Corning Freight Line, Ltd., was filed on September the 28th, 1934. Applicant now conducts under certificate freight service between Sacramento and Corning serving all intermediate points, including Willows and Williams, many of which points are also served by the rail carriers. This service has been in operation for twelve years and all shippers receive pick-up and delivery service at Sacramento and all other points served. This applicant's northern terminal (Corning) is 17 miles from Red Bluff and it is proposed to extend the service a distance of about 48 miles to include all points between Corning and Redding.

J. A. Gritsch, operating under the fictitious name of Oregon-California Fast Freight, now serves all points, Red Bluff to Dunsmuir (excluding Dunsmuir), from the San Francisco Bay area with overnight service. Gritsch is also the operator of an interstate service between California and Oregon points and

the service proposed by him is to be conducted by diversion to Sacramento, at which point he would receive cargoes for transportation via Davis to the same points he now serves from the San Francisco Bay area.

George W. Mullins operates a freight service between Red Bluff and Chico, and intermediate points and except in one or two instances closely parallels the rail service of the Southern Pacific. Mullins has no operating right between Sacramento and Chico. In this application he seeks to extend his present operating right southerly from Chico to Sacramento (no intermediates) and northerly from Red Bluff to Redding with the right to serve all intermediate points.

The protestants operate freight and express service between Sacramento and all points involved over the routes of the Southern Pacific Company, one route being via Marysville and Chico and the other being Davis, Willows and Williams, the two routes converging at Gerber, thence proceeding north. These rail services now provide for overnight transportation to all points with pick-up and delivery at the larger communities. A general comparison of the rates proposed by applicants and rail carriers indicates that the proposed truck rates are in many instances higher than those of the rail carriers. During the hearings applicants presented 65 oral witnesses and protestants, 18. The witnesses were examined by all applicants in their own behalf. Protestants' witnesses were presented at all hearings, except that protestants introduced no shipper witnesses at Sacramento. The explanation of this situation will be discussed later. All parties presented 22 exhibits, which reflect the present and proposed operating features and fully and clearly inform the Commission of the details, rates

and time schedules. It is clear from the testimony presented by applicants that shippers of Sacramento and receivers of freight at Redding and at Red Bluff and intermediate points (including between Corning and Red Bluff) affirmatively desire the truck service proposed by applicants. While these witnesses were asked to commit themselves as to particular applicants' provisions for service, in the main the witnesses were more interested in a truck service itself rather than the individual applicants. Many of the witnesses were patrons of the Gritsch service from the San Francisco Bay area and expressed a desire to have the same kind of service from Sacramento.

It may also be said that the movement of property as involved in these applications is almost wholly northbound from Sacramento and other points with a somewhat meagre return movement. Estimates vary but it is safe to assume that at least eighty per cent of all the freight that would be transported is northbound from Sacramento. In view of this fact it becomes important to consider first, the showing of demands made at Sacramento. Applicants produced 17 witnesses at Sacramento of which 15 were shippers to the points involved. Their testimony is affirmative of the need of the service by truck, as proposed, and also includes relation of the truck methods used by such shippers and others to provide deliveries at the Northern points in the absence of any certificated truck operation. Most of these witnesses used so-called contract services -- part of them by their own choice and others because of the requirements of receivers of

freight in the North. Many of the witnesses, however, did not dispute the adequacy of rail service, as such, but indicated their desire to have available a dependable regulated common carrier service of the same type used by them to many other points within the Sacramento commercial area.

Chief support for the establishment of the service on behalf of Sacramento shippers is found in the testimony of W. G. Stone, Manager of the Transportation Department of the Sacramento Chamber of Commerce. Mr. Stone, for twenty years, was traffic manager for the Thompson-Diggs Company, wholesale hardware shippers of Sacramento, and for the past three years has been in the present position with the Chamber of Commerce. In his testimony Mr. Stone said:

****"Sacramento is an important wholesaling and manufacturing center. We have many shippers here that serve approximately one million people in their trade area, extending from the southern end of the San Joaquin Valley up to Southern Oregon, into Nevada as far as Elko and Wells; this includes the territory covered by these three applications. One of the necessary features of any wholesale house is to have prompt, overnight service to its trading territory. That is particularly true in a territory such as the Sacramento Valley, where keen competition exists between wholesalers such as those at Sacramento and those in the San Francisco Bay territory. The hand-to-mouth buying during the past few years makes this particularly essential in the wholesaling and manufacturing business. As has been stated by most of the witnesses today, the buyer controls the routing to quite an extent. These buyers in the Sacramento Valley are demanding an overnight service at the hands of our Sacramento wholesalers. To meet this demand some of our shippers are using their own trucks to make delivery, others are using contract trucks; they are using certificated trucks wherever they are available. They also use the service of the rail carriers and the Pacific Motor Transport service and I might state-at this point I am not here

criticizing the Southern Pacific service to Red Bluff or Redding or the Pacific Motor Transport service as it exists at the present time. They have improved that service and I am not complaining of the service they are rendering at the present time. I find, however, that these same shippers in the Sacramento Valley who buy from our wholesalers also buy from shippers in San Francisco and the San Francisco Bay area; many of them came before this Commission and testified in favor of a certificated service from San Francisco to the same territory, and this Commission has granted such a certificate; many of these buyers request truck service; we have no certificated service to Red Bluff and Redding, our San Francisco competitors have a choice of the Pacific Motor Transport service and the certificated truck service, manifestly if our Sacramento wholesalers and manufacturers are to compete with those in San Francisco they should have the same choice of services.

"We find that a carrier which goes to the trouble and expense of securing a certificate as a rule renders a dependable service; we favor certificated truck service. It is the policy of the Sacramento Chamber of Commerce to favor certificated truck service rather than unregulated, contract service. We believe that the wholesalers at Sacramento should have the same choice of service as is offered competitors in San Francisco Bay area; in other words, we should have the P.M.T. service, the all rail service where it is available, and the certificated truck service at the same time."

Mr. Stone further said that he was making the statements above quoted as Manager of the Transportation Department of the Chamber of Commerce and with the unanimous consent of its Traffic Committee, which passes upon all matters of traffic policy. In addition, Mr. Stone stated that he had "conferred with some twenty-five or thirty Sacramento shippers to ascertain their viewpoint and I have endeavored to reflect that viewpoint as accurately as it is possible to do so." On cross-examination Mr. Stone stated that the Traffic Committee of the Chamber had not discussed possible impairment of rail service by any new service to the points in question. He did state, however, that in his judgment any service

to be established as proposed would not seriously impair rail service. Mr. Stone further said that the Traffic Committee believed a certificated truck service should be made available on a basis competitive with those from San Francisco and that it expressed no choice as between the applicants proposing such service. Mr. Stone, under further cross-examination, did not alter his statements. He did state, under cross-examination, however, that "many of the shippers with whom I discussed the subject complimented the Corning line very highly for the splendid service they had rendered. I will also say that they spoke highly of Pacific Motor Transport Service generally speaking." Mr. Stone also indicated that "kind words" had been said for other applicants but maintained the attitude of neutrality as among them.

Protestants presented no witnesses except their own operating witnesses from Sacramento and did not attempt to refute the statements of Mr. Stone. This testimony in connection with the shipper witnesses from Sacramento and the receivers of freight presented by applicants at Red Bluff, Redding and other points, presents a showing affirmative in character of the need and propriety of establishing a truck service as proposed.

Consideration of all the applicants involves no difficulty in selecting one of the three applicants. The senior applicant is the Sacramento-Corning Freight Line. It has ex-

tensive pick-up and delivery service in Sacramento and for twelve years has served the so-called West-side route to Corning. The extension of its service to the area demanding truck service involves a distance of 17 miles to Red Bluff and about 30 additional miles to Redding. This applicant is now one of the oldest and most active freight carriers in Sacramento, is almost now at the door of the area to be served, is financially able to extend and conduct the service proposed by it. Every witness who had used this service testified as to its efficiency for a period of many years and no complaint was made by any one. It may be also said that the persons who have used the other applicants' services from other points were also well satisfied. However, there is no need for more than one service and the equity attaching to the application of the Sacramento-Corning Freight Lines justifies its preference over the other applicants, without derogation of them. For this reason we believe that the offer of the Sacramento-Corning Freight Lines and the testimony supporting it justifies the granting of a certificate to this carrier and a denial of the other certificates.

In this proceeding protestants have attacked the record, particularly the testimony of Mr. Stone, on the ground that the showing is only for a "choice of service" and does not involve inadequacy of the rail service. Only in part does the record appear to support this contention. If the testimony of Mr. Stone were eliminated the record still would justify the establishment of a service as proposed, after giving due weight

to all the testimony presented.

The L. C. L. rail service from Sacramento to the points affected is overnight with a morning delivery at Redding at 7:55 in the morning. This service is maintained by baggage cars on regular passenger trains. According to the testimony of P. W. Barnard of the Southern Pacific Company's Bureau of Transportation Research, such service was established November 12, 1934. In February, 1932, similar overnight service had been established between San Francisco Bay Area, and all points involved, with the exception of Redding, which was later brought in to the morning delivery field. The overnight delivery to Redding, according to Mr. Barnard, was established because of testimony of the Gritsch application (Application No. 19044). Barnard said:

"It appeared from the testimony that our service to Redding was not fully meeting the desires of the people."

The testimony alluded to was given by various witnesses between September 28, 1933, and May 28, 1934. Decision No. 27293 thereon was issued August 27, 1934. Protestant, Southern Pacific, however, made no improvement in its service between Sacramento to Redding until November 12, 1934, six weeks after the application of Sacramento-Corning Freight Line was filed with this Commission. The instant matter differs very little from the Gritsch matter in substance. The improvement manifest from the testimony was not made until eighteen months had elapsed and then only after "competition knocked at the door" and presented the Sacramento-

(1)
Corning application. Redding, the object of the improvement, is the largest point involved and receives the greatest volume of property transported and it is now potentially more important because of the imminence of work on the Kennett damsite, a major part of the Central Valleys Water project and for which the Federal Government has provided \$20,000,000. Mr. Barnard denied that this service was instituted to defeat applicant's proposal and stated that it was a part of the general policy of the Southern Pacific to improve its service from large mercantile centers all over its system in California; that applicants' purposes had not been under consideration in its establishment.

Railway Express Agency operates many services to all the points in connection with passenger service and maintains pick-up and delivery at the larger points.

In addition, also, another baggage car is forwarded on a passenger train from Sacramento at 11:10 p. m. connecting with a passenger train at Davis and contains merchandise for Proberta, Red Bluff, Cottonwood, Anderson and Redding, with station delivery at all points including Redding before 8:00 a. m. This car is averaging 7.07 tons per day. A "loop" service for L. C. L., covering points south of Cerber on both East side and West side rail lines averages 3.27 tons per day.

(1) See Decision No. 23949 on Application No. 16176, Valley Motor Lines, 36 C.R.C. 540; Decision No. 27293 on Application No. 19044, J. A. Gritsch, dated August 27, 1934.

Protestants herein seek opportunity to present argument before the Commission en banc on the question as to whether the Commission is committed to a policy of providing a "choice of service" between rail and truck at all points on rail lines and assumes that if such policy is the policy of this Commission it will save itself the trouble in the future of opposing applicants who seek to parallel rail service where there is now no certificated truck service. The Commission has not adopted a policy of granting any application for truck service on the sole ground that "choice of service" is desirable. It is our belief that in all cases weight has been given to such desire only when there was sufficient testimony otherwise to substantiate a real need for the service. In the instant case, we believe the weight to be accorded the "choice of service" theory is not of itself sufficient to justify determination of the matter. There is the testimony of some 65 witnesses, both receivers and shippers of freight, most of whom have been using unauthorized carriers and some of whom have used their own trucks for lack of a regulated service, whose testimony we regard of sufficient weight of itself to justify the granting of a certificate.

Mr. Stone's testimony that he spoke for 25 or more of the large shippers who are members of the Sacramento Chamber of Commerce is not refuted in any way and it must be assumed (in fact, it is not disputed) that Mr. Stone was accredited by both the shippers and the Traffic Committee of the Chamber to so represent the situation for the benefit of the Commission. In view

of this showing, and without any negative facts presented by protestants it must be assumed that Sacramento shippers desire a truck service of the character proposed and this Commission should not vitiate such a showing by diverging the whole question to "choice of service."

In conclusion, therefore, we find as a fact that public necessity and convenience require the establishment of a truck service for the transportation of property between Sacramento and the points between Corning and Red Bluff, inclusive; and we further find that certificate therefor should be granted Sacramento-Corning Freight Line, Ltd., as an extension and enlargement of the service it now conducts under authority of this Commission between Sacramento and Corning.

Sacramento-Corning Freight Line, Ltd., 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.

O R D E R

Sacramento-Corning Freight Lines, Ltd., having made application for a certificate of public convenience and necessity for the establishment and operation of an automotive truck service for the transportation of property between Corning and Redding and certain intermediate points, a public hearing having been held and the matter duly being under submission and now ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation of such service, to wit: between Corning and Redding, in-

clusive, and the intermediate points of Richfield, Proberta, Red Bluff, Cottonwood and Anderson, as an extension and enlargement of applicant's operative rights as granted by Decision No. 22396, dated May 1, 1930, on Application No. 16426, over and along the following route:

Via Highway No. 99-W and Highway No. 99 between Corning and Redding, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted to Sacramento-Corning Freight Lines, Ltd., 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, stipulating in said acceptance that the certificate is accepted as an extension, enlargement and continuation of the rights heretofore granted applicant by Decision No. 22396, dated May 1, 1930, on Application No. 16426, and not as a new or separate right.
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, 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 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 the applications of J. A. Critsch and George W. Mullins, as above entitled, be and each of them hereby is 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 23d day of March, 1936.

Leon A. White

M. A. Cunn

William H. ...

Frank R. ...

Commissioners.