

Decision No. 38889

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of)
A. W. HAYS for a certificate of public)
convenience and necessity authorizing)
a through common carrier service for)
the transportation of freight as a)
common carrier between Corning, Orland,)
Artoise, Willows, Williams, and)
Maxwell, on the one hand, and Berkeley,)
Oakland, Emeryville, and San Francisco,)
on the other.)

Application No. 20413

- Berol & Handler, for Applicant;
- Thomas O'Hara, for Sacramento-Corning Freight Lines, Protestant;
- H. W. Hobbs & Ansel S. Williams, Jr., for Southern Pacific Company and Pacific Motor Transport Co., Protestants;
- Edward Stern, for Railway Express Agency, Protestant;
- W. L. Warner, for Sacramento Auto Truck Company, Protestant.

BY THE COMMISSION:

O P I N I O N

Applicant A. W. HAYS proposes to establish a highway common carrier truck service for the transportation of freight other than bulk petroleum products and live stock between Corning, Orland, Artoise, Willows, Williams, and Maxwell, on the one hand, and Berkeley, Oakland, Emeryville, and San Francisco, on the other. The proposed service would be rendered on a daily schedule leaving Corning at 7:00 P.M., and other northern points somewhat later, and arriving at Oakland the following morning at 4:30 A.M. and at San Francisco at 5:45 A.M. The return trip would leave San Francisco at

6:00 P.M. and arrive at Corning at 8:00 A.M. the following day.

Public hearings were held before Examiner Elder at Willows, on June 17th, 1936; at Corning on June 30th and September 30th, 1936; and at San Francisco on September 29th and October 2nd, 1936. The matter was submitted on briefs and is now ready for decision.

Applicant testified that the traffic which he hopes to obtain southbound consists mainly of live and dressed poultry, eggs, butter, olives, case goods, dressed veal, grain, fresh and dried fruits, and nuts. Northbound traffic consists of paints and hardware, farming machinery, groceries, feed, and building material. Applicant is already operating between these points as a contract carrier on a tri-weekly schedule, using eight pieces of equipment. He bases his application for a common carrier's certificate upon the claim that the territory requires a certificated trucking service, which does not exist at present, in addition to the existing rail and truck service.

Existing certificated common carrier service between the points involved is at present rendered by the Southern Pacific Company, Pacific Motor Transport Company, and Railway Express Agency, Inc. The northbound service provided by Pacific Motor Transport Company, operating as an express carrier over Southern Pacific rails, is an over-night service, daily except Sundays and holidays, affording early morning delivery at the northern destinations. Southern Pacific Company operates, daily except Sundays and holidays, a similar straight rail service northbound for LCL shipments, but without pick-up and delivery service, and a northbound carload

service providing first morning delivery at Williams, Maxwell, and Willows, and second morning delivery at Artoise, Orland, and Corning. The northbound Railway Express service is an over-night service with early morning delivery at the northern points daily throughout the year.

Southbound carload service of the Southern Pacific is available daily, leaving Corning at 5:00 P.M., and later from other northern points, and arriving at Oakland the following morning at 12:30 A.M. and at San Francisco at 2:30 A.M. Southbound LCL service of the Southern Pacific Company and Pacific Motor Transport Co.

gives second morning delivery at Oakland and San Francisco. During the summer months a tri-weekly over-night LCL refrigerator service also is rendered, leaving Orland on Mondays, Wednesdays, and Fridays at 7:39 A.M., making intermediate pick-ups, and arriving at San Francisco on Tuesdays, Thursdays, and Saturdays at 7:30 A.M.

Railway Express Agency maintains a southbound schedule leaving Corning at 1:45 P.M., and other northern points later, arriving at Oakland at 6:10 P.M. and at San Francisco at 6:52 P.M. daily; and another leaving Corning at 4:48 A.M., and other northern points later, and arriving at Oakland at 9:12 A.M. and at San Francisco at 9:52 A.M. daily; and a third leaving Corning at 7:15 A.M., and other northern points later, and arriving at Oakland at 2:39 P.M. and at San Francisco at 3:12 P.M. daily except Saturdays and days preceding holidays. An additional schedule leaving Corning at 6:25 A.M. and arriving at San Francisco at 3:12 P.M. is also maintained Sundays and holidays only. Subsequent to the submission of this proceeding, these southbound express schedules were slightly modified. A few minutes only are involved in the changes, and they may be ignored for present purposes.

It is applicant's contention that shippers consigning goods from the northern points desire and need an over-night service departing in the evening, to allow them a full day for packing and preparation, and permitting transportation at night in a cool and even temperature. The northbound service, it is claimed, is desired by the shippers and, moreover, is necessary to render the southbound operation possible.

The record before us fails to disclose that public convenience and necessity require the operation of the proposed northbound service. Applicant's witnesses testified in this regard substantially as follows:

E. C. Young, the proprietor of a machine shop at Willows who receives iron, steel, machinery, and supplies from the Bay District, testified that the proposed service would be a help which he would appreciate. He admitted, however, that he had no complaint against the Pacific Motor Transport service and that he experienced no delay, but said he sometimes did not "give too well" with its local delivery man. Ray Symonds, a used car dealer of Corning, receiving tires, batteries, auto parts, and accessories, testified that the proposed service would be advantageous, as it would permit him to give orders to applicant's drivers to be filled in San Francisco and returned the next day. It was stipulated that Miles G. Ramer, an auto parts dealer of Corning, would testify similarly. It should be noted, however, that this would result in a second morning delivery, which is the same service as would be received by a mail order routed via the Pacific Motor Transport. George E. Wright, a hardware and implement dealer of Orland, also testified similarly, adding that he considered the Pacific Motor Transport service satisfactory. F. H. Nielsen, a construction contractor of Orland receiving construction materials from the Bay

District, stated he required an over-night service, as time is of the essence in building contracts. He claimed that a particular rail shipment required 48 hours for delivery, but it was shown in rebuttal that the shipment referred to was in transit less than 22 hours. Neilsen further admitted that he was not aware that the Pacific Motor Transport Company afforded an over-night service into Orland. Harlow Plimpton, a grain dealer of Willows receiving sacks and twine from the Bay district, testified that the present rail service is satisfactory. H. K. Shirk, of the Corning Olive Growers Association, uses the rail service northbound for transportation of barrels, as it is cheaper than the truck service, but uses trucks for salt shipments as they are quicker. He did not claim, however, that speed was necessary for such shipments. Harry St. Claire Wheeler, a plumbing and heating contractor of Corning, testified he had found rail and Pacific Motor Transport service for the transportation of sheet metal unsatisfactory, due to warping and staining sustained through the handling of the shipments. He is obliged to use truck service from Sacramento, and testified he needs applicant's service for these shipments to permit him to buy in San Francisco.

In support of the adequacy of existing northbound service, applicant produced the testimony of Minnie E. Grieve, proprietrix of a variety store at Corning; M. C. Phetteplace, a Corning grocery and furniture dealer; William J. Hannan, a Corning dry goods dealer; Charles V. Cross, a Corning shoe dealer; C. C. Barthels, traffic manager for Schmidt Lithograph Co., printers and manufacturers of labels and boxes; George Edmonds, shipping clerk for Cantner & Mattern, knit goods manufacturers; John C. Scott, of Ginn & Co., publishers of school text books; and R. J. Burke, office manager for Wilson's Sporting Goods Company. All of these witnesses

testified that they use one or more of the existing services, and in some cases parcel post as well, find them satisfactory and adequate, and need no additional service.

The large preponderance of evidence from all witnesses, including applicant's, thus supports the conclusion that the existing northbound service is adequate. Witness Wheeler's criticism of the present service appears to be one affecting his individual satisfaction. The record fails to show any public need for the proposed service northbound.

The evidence concerning southbound traffic relates principally to the transportation of dressed veal, canned olives, grain, eggs, and live and dressed poultry.

J. T. Donovan, a meat packer of Corning, who ships dressed veal to San Francisco and Oakland, testified that he prefers truck service as he believes it results in less shrinkage, and the veal does not get so dusty. He also stated that he had no complaint regarding rail service and formerly used it principally. He further stated that he was not aware of the existence of the Southern Pacific refrigerated LCL car service, which would be even better than truck service. It was testified that Frank M. Hall, an employee of the Poultry Producers of Central California, would testify similarly to Donovan regarding southbound shipments of dressed calves. E. K. Shirk, of Corning Olive Growers Association, representing 63 growers who constitute about 20% of the growers in the Corning territory, testified that under present conditions small orders coming in during the morning can be labelled and prepared for shipment in time for the 1:15 P.M. southbound express schedule, but that larger shipments have to wait over. With

applicant's proposed truck service the larger shipments also can be labelled and shipped the same day because of the later departure proposed by applicant. There was no explanation from this witness, however, as to why the 4:00 A.M. express schedule could not conveniently be used for the later shipments. J. N. Glick, a Corning olive grower and canner, in contrast to witness Shirk's testimony, stated that he needed the proposed truck service in order to get out small orders as quickly as they arrived, so as to meet a boat schedule departing from San Francisco ordinarily the following noon. Most of such traffic, however, is apparently interstate commerce. Glick also testified he had received complaints regarding the Pacific Motor Transportation Service from his consignees. Harlow Plimpton, a Willows grain dealer, testified regarding southbound shipments that the present rail service is satisfactory except for emergency shipments at night. Applicant's proposed schedule would be a convenience to him for such shipments as he could make ready by the 9:00 P.M. departure. It appears, however, that at least part of such emergency shipments are for export and interstate commerce. W. E. Macy, of Orland, proprietor of three grocery stores, a lumber yard, four feed stores, and a wholesale poultry and egg dealer, testified that he received tri-weekly service by contract trucks at the present time. He would like a daily truck service and dislikes the Railway Express Agency service. He offered no particulars, however, showing the truck service to be necessary or convenient to him, or explaining his antipathy to the express company's service. It was stipulated that the testimony of witness Hollis, an employee of Macy, would be the same.

Virtually the only convincing support for the application, from public witnesses, is to be found in the testimony of shippers

of live and dressed poultry who also ship eggs. These witnesses were Walter J. Darby, proprietor of a feed store at Corning, Charles C. Stubbs, a poultry producer of Corning, R. S. Marko, of Orland, district representative of the Poultry Producers Association of Central California, and Henry W. Schramm, of Corning, manager of Bennett & Layton, a feed and poultry company. From the testimony of these witnesses it appears that eggs are gathered and brought into the packing plants during the morning; during the afternoon they are pre-cooled, which takes five or six hours, packed and made ready for shipment between five and six P.M. The eggs require an even temperature in transportation. There was some testimony that arrival at the San Francisco and Oakland markets at a very early hour was necessary in order to avoid market losses, but this does not appear to be a fact as the weight of the evidence shows that the market price of eggs is fixed from noon of one day until noon of the following day, and that all eggs arriving at the market receive the market price on the day of unloading. In support of the proposed service for the egg shipments, these witnesses testified in effect that due to the pre-cooling requirements the eggs could not conveniently be made ready for shipment by the Express Company's afternoon schedule, and furthermore, that to use this schedule it was necessary to leave the eggs standing at the station awaiting arrival of the train. This, it was said, resulted in increasing the temperature of the eggs.

In opposition to this testimony, it was brought out that there is no real necessity in the egg business for immediate shipment and delivery, as any egg sold within thirty days is considered a fresh egg, and the witnesses admitted that they collect eggs for

shipment over a period of a week. No explanation was given why the early morning express schedule would not meet every requirement of temperature and schedule. All of these witnesses are at present using contract truck service to the Bay district in preference to rail or express. Nearly all of them, however, use rail or express service for shipping eggs to points other than San Francisco and Oakland, and find that service satisfactory.

With reference to live and dressed poultry, however, the testimony of these witnesses is uncontroverted that over-night truck service, departing in the evening and permitting early morning arrival at the markets, is convenient and necessary, is demanded by marketing conditions, and is superior to rail service in that it results in less loss through shrinkage and death.

From the record we are unable to find that the existing southbound service is inadequate for the proper transportation of dressed veal, olives, and grain. Public convenience or necessity has not been shown to require additional facilities beyond those at present available. Neither the personal preference of individual shippers nor the existence of occasional emergency shipments constitutes public convenience and necessity. Such emergency shipments would sometimes occur no matter how many schedules might be instituted.

With regard to the egg traffic, while the unanimity with which the shippers utilize truck transportation seems to manifest a preference on their part for that form of transportation to the Bay district, they use rail or express service to other points with complete satisfaction, and we are unable to conclude from the

evidence that there is any inadequacy in the existing service or that public convenience and necessity is not being properly served.

It is clear, however, that public convenience and necessity require applicant's service for the transportation south-bound of live and dressed poultry, and that a certificate should be granted for that purpose.

A. W. HAYS 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

Public hearings having been held in the above-entitled proceeding, and the matter now being ready for decision, the Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by A. W. HAYS of an automotive truck service as a highway common carrier for the transportation only of live and dressed poultry in coops from Corning, Orland, Willows, Maxwell, and Williams, on the one hand, and Oakland and San Francisco, on the other.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for said service be and it is hereby granted to A. W. HAYS, subject to the following conditions:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file, in triplicate, and concurrently make effective on not less than ten (10) days' notice to the Railroad 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, or rates and rules 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 Railroad 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 obtained.
5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.

In all other respects the application 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 7th day of September, 1937.

Walter A. ...
Ernest C. Whisell

W. L. Rice
 Commissioners.