

Decision No. 30028

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
PACIFIC MOTOR TRUCKING COMPANY for
a certificate of public convenience
and necessity for the transportation
of property by motor truck for other
common carriers between the Southern
Pacific Station at Santa Barbara and
consignors of freight, including
railroad stations within the Montecito
zone described in application.)

) Application No. 19563

ORIGINAL

E. J. Foulds for Applicant.

W. K. Downey for Pacific Freight Lines,
Protestant.

BY THE COMMISSION -

O P I N I O N

Applicant is here requesting a certificate of public convenience and necessity to operate trucks between Santa Barbara and Montecito for the transportation, under contract, of freight and express moving in the custody of the Southern Pacific Company, Pacific Motor Transport Company and the Railway Express Agency, Inc. and other carriers of the same class between those points. Traffic will move at the published rates of the three carriers just named.

A public hearing was held at Santa Barbara before Examiner W. R. Williams and the matter submitted on briefs.

Montecito, a residential community, with a small business district, is contiguous to Santa Barbara. The traffic from and to this point is now transported by rail to Miramar, a station on the Southern Pacific approximately three miles south of Santa Barbara, and from there transported by applicant's trucks from and to Montecito. Service in this manner is rendered twice weekly. Montecito also receives a daily truck service

from and to points south and north of Santa Barbara by protestant, Pacific Freight Lines.

Before proceeding to a determination of this matter the history of this proceeding will be briefly reviewed. In 1931, the Pacific Motor Transport Company, inaugurated a pick-up and delivery service at Montecito, the traffic being received or delivered at the rail station at Santa Barbara and transported by truck from and to Montecito. No certificate of public convenience and necessity had been obtained by the Pacific Motor Transport Company to perform this service and for this reason it was ordered to cease and disist therefrom unless and until a certificate was obtained. Pioneer Expross Co. et al. v. Pacific Motor Transport Co. et al., 37 C.R.C. 102. Subsequent thereto, Pacific Motor Trucking Company, by Application No.18863, sought a certificate to establish truck service between Santa Barbara and Gaviota and intermediate points and between Santa Barbara and Montecito. This application was granted (Decision No.26468). Thereafter, a rehearing was granted and the order rescinded and the application denied, without prejudice. In the majority opinion preceding the order on rehearing, it was pointed out that two means appeared practical to meet situations where rail carriers sought to improve service by the use of trucks; first, by the granting of certificates to rail carriers or their subsidiaries, and, secondly, by contracting with certificated carriers already in the field to perform the truck service. It was there said:

" In some instances the one may prove the better, in some the other. The present seems to be a case where the second plan referred to may well be given a chance to prove itself."

Thereafter, applicant and Pacific Freight Lines attempted to effect an arrangement whereby the latter would perform the truck

service between Santa Barbara and Montecito for the Southern Pacific Company, Pacific Motor Transport Company and the Railway Express Agency. The final offer of the protestant was as follows:

(1) On all traffic requiring a pick-up and delivery service Pacific Freight Lines will handle the traffic between Santa Barbara and Montecito by truck (not in sealed vans) and will make such connections with the arrival and departure of trains as to effect receipt or delivery of freight without delay due to other work.

(2) On traffic which does not include a pick-up and delivery service, protestant will transport by truck such freight between Santa Barbara and Miramar.

(3) The charge for transporting the foregoing traffic would be 10 cents per 100 pounds, with a minimum charge per shipment of 25 cents but with no charge for handling C. O. D. shipments.

This offer was rejected by applicant for the following reasons:

"The Pacific Freight Lines, * * * is in competition with the Pacific Motor Transport Company for practically all of this traffic, most of it coming out of Los Angeles to Montecito, so, in our opinion, if the employees of the Pacific Freight Lines want to make these deliveries for us, they would have a distinct advantage in soliciting traffic away from us of any hauling from Los Angeles, and I believe it is inevitable that that would follow. Whether or not they would deliberately solicit it, it would naturally follow, so that ultimately it would be diverted over to them.

The Pacific Freight Lines, and the Pacific Freight Lines equipment, if they were making deliveries to these patrons, it surely would follow that eventually the traffic would move Pacific Freight Lines all the way from Los Angeles, not by the Pacific Motor Transport Company, but by its competitor, the Pacific Freight Lines.

The proposed change, in our opinion, would result in an increase of what it would cost us to do the work ourselves, and the fact that they were unable to propose any plan under which they could protect our traffic, their proposal was not satisfactory and was rejected."

Following the rejection of the offer of Pacific Freight Lines, applicant filed the present application.

While there is no complaint of the service rendered by the Pacific Freight Lines from and to the territory it has undertaken to serve, there are shippers using the overlying carriers, i.e., Southern Pacific Company, Pacific Motor Transport Company and Railway Express Agency, who desire an improved and expedited service

As heretofore stated, applicants now render a twice-weekly service from and to Montecito by handling the traffic to Miramar and there distributing it by truck from and to Montecito. Improved service could be rendered if additional train service were provided from and to Miramar. However, this improved service could be rendered only at a cost out of proportion to the amount of traffic now handled.

The present cost of rendering the service to Miramar is approximately \$503 a month. It is estimated that applicant by operating a truck from and to Santa Barbara could perform a daily service at a cost of approximately \$53 a month by using the pick-up and delivery truck now operated within the corporate limits of Santa Barbara between that point and Montecito.

The amount of all traffic originating at or destined to Montecito is slight. Its loss to applicant, its overlying carriers or protestant would be of small consequence.

Upon these facts we must determine whether or not the granting or denying of this application is in the public interest. In determining our answer to this question we view this application as we do every application and analyse it standing on its own foundation. The granting or denying of every certificate of public convenience and necessity should be determined upon the specific facts and the presence or absence of merit in each individual case. No hard or unyielding plan or set of specifications have been devised which could be applied to furnish the correct answer in every case.

There are, however, certain well recognized principles and concomitants that stand out as guide posts and which help to direct us in our conclusions. All of these point the way to our ultimate objective, the public interest. Among these guide posts are first, the recognition of the vital importance of rail

transportation and the perpetuation thereof. Another guiding principle is our recognition that the pioneer in the field of common carrier transportation always deserves consideration, and may even deserve the protection of our regulation, so long as this pioneer supplies a service that is satisfactory and adequate to meet all phases of the public interest. Still another guide is afforded us in the acceptance of the principle that the common carrier, who is rendering a useful and a necessary public service, should be permitted to improve and strengthen that service by the adoption of a faster and more frequent service, and the inauguration of greater efficiency and economy in the performance thereof, provided, however, that in doing so no violence is done to the sound principles of regulation and the public interest is best subserved.

We are of the opinion and so find that upon the record in this case that the Pacific Motor Transport Company should be granted the certificate sought herein. In so finding we have followed the broad principles enunciated above. We believe that a full and fair consideration of this record, viewed in the light of these guiding principles fully justifies our conclusion that a more satisfactory and adequate service will be rendered to and enjoyed by the shipping public through the granting of this certificate and the rendition of this service proposed by the applicant herein. This does not mean that every application for similar privileges will of necessity result in similar conclusions. Each application must stand or fall upon its own merits and must be weighed by the scales of the balancing factors hereinabove specified.

Pacific Motor Trucking Company 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

Pacific Motor Trucking Company, a corporation, having made application as above entitled, a public hearing having been held, the matter having been duly submitted on briefs and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment by Pacific Motor Trucking Company of an automotive truck service as a highway common carrier for the transportation of property in the custody of Southern Pacific Company, Railway Express Agency, Inc., Pacific Motor Transport Company and any other carrier of the same classes, which originates at or is destined to points north of Santa Barbara or south of Montecito, between Southern Pacific Company's station at Santa Barbara and points within a zone within Montecito, which zone is bounded as follows:

Beginning at Santa Barbara city limits and Ocean Front, easterly along Ocean Front to a point southerly of the junction of Sheffield Drive and State highway, thence north and along Sheffield Drive to East Valley Road, westerly on East Valley Road to Sycamore Canon Road, continuing westerly on Sycamore Canon Road to Santa Barbara City limits and following Santa Barbara city limits to starting point.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted to Pacific Motor Trucking Company, subject to the following conditions:

1. That no authority is herein granted for the transportation of property locally between Santa Barbara and Montecito, both points inclusive.
2. 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 service herein authorized shall be confined to property in the custody of Southern Pacific Company, Pacific Motor Transport Company, Railway Express Agency, Inc., and any other carrier of the same class.

3. Applicant shall file, in duplicate, within a period of not to exceed twenty (20) days from date hereof, copies of the contract or contracts entered into by applicant, under authority herein granted, relating to the operation herein directed to be certificated. Applicant shall commence operation of said service within a period of not to exceed sixty (60) days from date hereof.

4. 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.

5. 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.

6. 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.

7. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No.91.

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 S. ...
John A. ...

Ray C. Wakefield
Har L. Riley
COMMISSIONERS.