

Decision No. 30187

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
NAPA TRANSPORTATION COMPANY, for)
a certificate of public convenience.)
and necessity authorizing the trans-) Application No. 21104
portation of freight by auto truck)
between San Francisco and Napa.)

MCCUTCHEON, OLNEY, MANNON & GREENE by
F. W. Mielke for Applicant.

SOUTHERN PACIFIC COMPANY, PACIFIC MOTOR
TRUCKING COMPANY, and PACIFIC MOTOR
TRANSPORT COMPANY by A. S. Williams,
Protestants.

SAN FRANCISCO & NAPA VALLEY RAILROAD and
NAPA VALLEY BUS COMPANY by Clyde E. Brown,
Protestants.

SOUTHERN PACIFIC GOLDEN GATE FERRIES, LTD.
by E. J. Foulds and R. S. Meyers,
Interested Party.

RILEY, COMMISSIONER:

O P I N I O N

Napa Transportation Company, a corporation, applicant herein, is the owner of a fleet of four diesel powered vessels which are being operated between San Francisco and Napa and certain intermediate points. By this application, authority is sought to establish an alternative truck service between terminals only in order to effect certain operating economies and at the same time maintain the present daily service.

A public hearing in this matter was held at San Francisco on May 6, 1937, and it is now ready for decision.

Instead of rendering daily vessel service in both directions, applicant would render only tri-weekly vessel service in both directions. For example, vessel service from San Francisco to Napa would be rendered on Mondays, Wednesdays and Fridays. On Tuesdays, Thursdays and Saturdays the truck would run from San Francisco to Napa. In the reverse direction, vessel service would be rendered from Napa to San Francisco on Tuesdays, Thursdays and Saturdays, and truck service would be rendered from Napa to San Francisco on Mondays, Wednesdays and Fridays.

Applicant proposes to operate a truck service over one of three routes, hereinafter specified, and to have the right to determine which of the said three routes the said Applicant will use. Said three routes are, first, via the public highways between Napa and Vallejo thence via Southern Pacific-Golden Gate Ferries, Ltd. between Vallejo and San Francisco; second, via the public highways and the Golden Gate Bridge and/or the common carrier ferry route between Sausalito and San Francisco; and third, via the public highways and the San Francisco-Oakland Bay Bridge and/or the common carrier ferry route between Oakland and San Francisco. No change in the present rates is proposed.

The application was opposed by six other carriers serving points in the territory involved.

J. C. Stone, traffic manager for applicant, testified that for the year ending December 31, 1936, the gross revenue of applicant was \$44,186.22 and the total expenses were \$47,639.86, leaving a net loss of \$3,453.64 for the period (Exhibit No. 1).

Under the proposed truck service cargo tonnage of a kind that does not require a daily service will be held

over to the following day to be transported by vessel. Where a daily service is maintained, as at present, three vessels are required to maintain the schedules, one of which is used as a standby. If the authority is granted as requested, Applicant will then require only one vessel on regular service and one standby vessel. It would then be in a position to dispose of two of its vessels.

During the months of April, May, June, and July, 1936, the City of Napa and South Shore II, vessels of Applicant, carried a total cargo of 7018 tons (Exhibit No. 2). Under the proposed plan of operation, the cargo of the City of Napa would be distributed to South Shore II and one truck; the City of Napa to be withdrawn from service. Distribution of the tonnage shown in Exhibit No. 2 would have resulted in 6023 tons being carried by South Shore II and 995 tons being carried by truck. The cargo capacity of South Shore II is 200 tons, but on mixed cargo its capacity is reduced to 170 tons. It was shown that the heaviest single day's cargo for the four months period covered by Exhibit No. 2 would not have fully loaded South Shore II. Of the cargo shown by Exhibit No. 2, witness Stone has assigned to the truck that tonnage requiring a daily service, all other cargo is held over to be transported by vessel the following day. Of the so-called "holdover" tonnage moving between terminals, approximately 84 per cent consists of corn, rye, whiskey, wine, empty containers, hides, dried fruits and grain products.

Southern Pacific-Golden Gate Ferries Ltd., had no objection to the granting of this application provided a

condition be attached to any authority granted which would compel Applicant to use the ferry facilities of said Protestant between Vallejo and San Francisco. Applicant indicated its desire and willingness to comply with said condition. Under such a plan, Applicant showed that the estimated annual costs of truck operation, under its own power, approximately 15 miles over the public highway between Napa and Vallejo, and by means of the ferry between Vallejo and San Francisco, would be \$6,369.38; and further showed estimated annual savings due to the withdrawal of the City of Napa from its present boat service in the sum of \$10,799.44. Applicant pointed out that as the result of the proposed truck substitution said Applicant would enjoy a net annual operating saving of \$4,430.06.

It was further shown that operations over the Golden Gate Bridge would increase the annual operative costs over those last specified by \$800.

Subsequent to the submission of this matter and on the date of this Order, the Commission has issued its Decision No. 30086, whereby it has authorized Southern Pacific-Golden Gate Ferries Ltd., to abandon and discontinue, upon five days' notice to the public and to this Commission, said notice to be exercised within thirty days from the date hereof, the said ferry service between San Francisco and Vallejo. Therefore, the Order that follows herein is predicated upon the supposition that the said Vallejo-San Francisco ferry service will be no longer available to the truck operation contemplated by the Applicant herein.

No authority is sought to serve any territory other than that now served by vessel. Applicant's request is for

authority to perform a dock-to-dock truck service coordinated with its present vessel service. On days when traffic is sufficiently heavy the standby vessel will be used instead of the truck, and when traffic is light Applicant proposes to use the truck only.

Protestants San Francisco and Napa Valley Railroad and Napa Valley Bus Company, through counsel, offered into the record by reference its time schedules, tariffs and annual reports on file with the Commission.

Protestants Southern Pacific Company, Pacific Motor Trucking Company and Pacific Motor Transport Company contend that Applicant failed to produce any public witnesses to show public convenience and necessity; that Applicant is seeking to invade an entirely new field of transportation; and that a certificate for an alternative truck service may not be granted upon a mere showing that operating economies will be effected by the proposed truck operations. They cite in support of their contentions the decision of this Commission in Application of Los Angeles and Salt Lake Railroad Company, 30 C.R.C. 857. There is very little similarity between the facts involved in that case and those presented here. It was there proposed to discontinue in its entirety the existing passenger service by rail and to substitute in its place a stage service by the Union Pacific Stage Company, a subsidiary of the Union Pacific Railroad Company, which was also the owner of the Los Angeles and Salt Lake Railroad Company. In the instant proceeding there is no proposal on the part of the Napa Transportation Company to abandon its service by water, but only to substitute in part an alternative service by truck at a substantial saving in costs of operation. Authority

for the partial substitution of service by truck is here sought for the purpose of enabling the Applicant to continue transportation by water and not for the purpose of abandoning such service. To deny Applicant the relief sought would be tantamount to forcing it out of business, which clearly would not be in the public interest.

Protestants' contentions in this matter appear to be entirely inconsistent with the views they have taken in applications which they have filed with this Commission for authority to accomplish a similar purpose. Pacific Motor Trucking Company has filed applications and has received authority from this Commission to operate as a highway common carrier either in lieu of train operation by Southern Pacific Company or as a supplement to such train service. In the instant application, Applicant is seeking authority to operate an alternate truck service, which is more economical than present vessel service for the lighter cargo, so as to provide for a continuation of a daily service which the public not only demands but requires.

The application of Pacific Motor Trucking Company (Application 19563) sought a certificate to operate as a highway common carrier between Santa Barbara and Montecito in lieu of rail box car service now being rendered by Southern Pacific Company between Santa Barbara and its rail station at Miramar. In said application, Applicant contended that it sought authority to operate truck service, which was more economical than rail service in that instance, so as to render to the public a service which it required. It is apparent that some analogy exists between the application mentioned above and the one herein, the former seeking a new economical mode of transportation in order to render a daily service, and the

letter seeking like authority so as to be enabled to continue a daily service.

In the matter of said Application 19563, supra, the Commission, by Decision No. 30098 issued under the date hereof, to-wit: September 7, 1937, granted the said Pacific Motor Trucking Company the certificate sought in said application. By reason of the analogy that exists in the said application and the instant application, we quote from the said Decision No. 30098 :

"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."

Napa Transportation 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.

I recommend the following form of Order:

O R D E R

An application therefor having been made, a public hearing having been held and the Commission now being fully advised therein;

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

HEREBY DECLARES that public convenience and necessity requires the establishment and operation by Napa Transportation Company, a corporation, of a highway common carrier service, as defined in Section 2-3/4 of the Public Utilities Act, for the transportation of property between applicant's dock in San Francisco and applicant's dock in Napa over and along the following route:

Over the public highways between Napa and San Francisco, via California State route No. 8 from Napa to junction of said route with California State Route No. 1, near Ignacio, thence via California State Route No. 1, including the Sausalito lateral, to San Francisco and/or via the common carrier ferry between Sausalito and San Francisco

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor is hereby granted to said Napa Transportation Company, subject to the following conditions and not otherwise:

1. The authority herein granted for a highway common carrier service, as hereinabove defined, is to be operated in coordination and conjunction with the vessel service now being operated by applicant between San Francisco and Napa, said highway service to be operated only on alternate days from San Francisco to Napa, and only on alternate days from Napa to San Francisco.
2. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
3. 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 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 conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.

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 Railroad 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 obtained.

6. 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.

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. 9L.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

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 7th day of September, 1937.

Walter S. ...
Leon Whittell

Ray L. ...
Commissioners