

Decision No. 30281

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
PACIFIC MOTOR TRUCKING COMPANY for )  
clarification of operative rights )  
held by it under Decision Nos. 25720 )  
and 26017 between San Jose and Monta )  
Vista. )

Application No. 21457

ORIGINAL

H. W. HOBBS, for Applicant.

WAKEFIELD, Commissioner:

O P I N I O N

By this application Pacific Motor Trucking Company seeks an order of this Commission clarifying certain operating rights originally granted to Pacific Motor Transport Company by Decision No. 25720, dated March 10, 1933, on Application No. 18758, and subsequently transferred under authority of the Commission's Decision No. 26017, dated June 5, 1933, on Application No. 18892, to Pacific Motor Trucking Company.

The specific operating right proposed for clarification encompasses applicant's highway common carrier service between Los Gatos and Mayfield as granted in Decision No. 25720, above referred to, as an extension and enlargement of its existing rights between San Jose and Santa Cruz, and the clarification requested is for the purpose of establishing the right of applicant to serve between Monta Vista and San Jose via the Stevens Creek Road.

A public hearing was had in this matter in San Francisco on Wednesday, October 20, 1937, at which time the matter was submitted and is now ready for decision.

It is the contention of applicant, as expressed in the statements of counsel and through the testimony of Oliver Etzel, Special Representative for the company, that Pacific Motor Trucking Company in filing Application No. 18758 did so with the intention of establishing a service to succeed that of Peninsular Electric Railway Company abandoned on March 11, 1933, which included the disputed service between Monta Vista and San Jose; that Pacific Motor Trucking Company interpreted the Commission's Decision to include said service and in this belief has so operated since the granting of the right referred to.

Referring to Application No. 18758 and Decision No. 25720 which at request of counsel were made a part of the record herein, I find that in paragraph IV, on page one thereof, applicant makes the following proposal:

"Applicant proposes and requests permission to establish a motor truck service between Los Gatos and Mayfield as an extension of its franchises herein referred to, and to points intermediate to Los Gatos and Mayfield for the carriage of rail traffic and Railway Express Agency traffic between said points and points intermediate thereto, namely, Bulwer, Congress Junction, Saratoga, Cupertino, Monta Vista, Simla, and Los Altos."

As may be seen from this statement no specific request was made to serve between Monta Vista and San Jose via the Stevens Creek Road as now alleged by applicant, although the map attached to Application No. 18758 shows a proposed operation between such points. Decision No. 25720, granting the certificate ex parte, definitely set forth the service as between Mayfield and Los Gatos and provides for service to the intermediate points of Bulwer, Congress Junction, Saratoga, Cupertino, Monta Vista, Simla and Los Altos and, further provides, that service between termini shall be via the main highway.

Based on the record herein I am of the opinion that, no matter what the intention of applicant may have been, the application actually presented for the attention of the Commission did not, in the body thereof, ask for the authority now sought and, I am of the further opinion, that the Commission's Decision No. 25720 definitely did not provide for service by Pacific Motor Trucking Company to points other than those specifically set forth in the decision, via the main highway between termini.

No protestants appeared in this proceeding and applicant's testimony was to the effect that all points specifically named can and are actually being served under the existing authority and that the operation between San Jose and Monta Vista via Stevens Creek Road would provide a further routing whereby operating economies and a saving in time could be effected.

I believe, inasmuch as the instant application seeks only the clarification of an order in another and different proceeding, that no order should be appended hereto.

However, in view of the circumstances developed in the instant proceeding, I shall recommend that there be issued immediately a supplemental order to Decision No. 25720, heretofore referred to, in Application No. 12753.

The foregoing opinion is hereby approved and ordered filed as the opinion of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1<sup>st</sup> day of  
Nov., 1937.

William H. Hall  
James Whitman  
James P. Devlin  
Robert W. Brown  
Wm. L. Caley  
COMMISSIONERS.