

Decision No. 31484

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of 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 Willits, on  
the one hand, and Korblex and Samoa  
on the other hand, and certain inter-  
mediate points.

Application No. 21841

BY THE COMMISSION:

O P I N I O N

In this application, as amended, Pacific Motor Trucking Company requests a certificate to establish and operate a highway common carrier service for the transportation of property moving in the custody of Northwestern Pacific Railroad Company, Railway Express Agency, Incorporated and any other carrier of the same class moving to, from and between the Northwestern Pacific Railroad Company stations at Willits, Korblex and Samoa and any station which now exists or hereafter may be established on the lines of Northwestern Pacific Railroad Company intermediate to Willits, Korblex and Samoa; such service is to be furnished by applicant only at such times as the railroad of Northwestern Pacific Railroad Company north of Willits, or any part thereof, cannot be operated due to causes beyond the control of said company.

The rates to be charged to the general public for such service will be those provided for in the tariffs of the common carriers whose traffic applicant proposes to handle. The carriers, whose traffic applicant proposes to handle, will pay to applicant for such services an amount compensatory for the services to be rendered by applicant for such carriers.

It is not proposed to maintain any definite time schedule. Service will be provided if and when necessary to meet traffic requirements. Necessary connections with Northwestern Pacific Railroad Company trains will be made at Willits.

As justification for the authority sought, applicant alleges as follows:

Due to unprecedented storm conditions and extremely heavy rainfall during the winter of 1937-1938, washouts and slides rendered the roadbed of Northwestern Pacific Railroad Company impassable north of Willits for a period of several weeks, with the result that rail traffic moving to rail points was seriously delayed, and the shipping public utilizing the services of the Northwestern Pacific in the territory north of Willits was greatly inconvenienced. Northwestern Pacific called upon applicant to operate trucks over the highway during the emergency period which existed, and applicant did, during said period, transport rail traffic to and from said territory in lieu of the rail service. An emergency existed which required immediate remedying. The purpose of this application is to place applicant in a position to render truck service in the territory north of Willits in lieu of the rail service should a similar emergency occur in the future. The territory in question is subject to heavy rainfalls during the winter months and with such heavy rainfalls the services of Northwestern Pacific are subject to temporary discontinuances due to washouts, slides, cave-ins, and the like. The Northwestern Pacific is the only rail carrier serving the territory in question, and the shippers in that territory depend upon the Northwestern Pacific for the movement of a large portion of the traffic moving into and out of rail points served by the Northwestern Pacific. Public convenience and necessity require that during such emergency periods, as hereinbefore described, a means be afforded for moving the traffic of the Northwestern Pacific and substitution of truck service in lieu of the rail service during such periods will afford the necessary means of moving such traffic.

Humboldt Truckmen's Association, Frasher Truck Company, Railway Express Agency, Incorporated, Intercity Transport Lines and Brotherhood of Railroad Trainmen have stipulated in writing that they will not oppose the granting of the authority requested herein provided that any certificate granted will contain a restriction in substantially the following language:

"Applicant is authorized to conduct operations under this certificate only at such times as the rail line, or some part thereof, of Northwestern Pacific Railroad Company north of Willits cannot be operated due to floods, washouts, land slides, cave-ins or other similar causes beyond the control of said Northwestern Pacific Railroad Company and only between rail stations of said Northwestern Pacific Railroad Company and only for periods not in excess of six months at any one time."

The proposed restriction appears to be reasonable and in view of the agreement between the parties at interest it does not seem that a public hearing is necessary. The request appearing to be in the public interest will be granted.

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

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Pacific Motor Trucking Company, a corporation, of a highway common carrier service for the transportation of property, moving in the custody of Northwestern Pacific Railroad Company, Railway Express Agency, Incorporated and any other carrier of the same class, between the railroad stations of Northwestern Pacific Railroad Company at Willits, Korblex and Samoa and intermediate points now in existence or hereafter established.

IT IS ORDERED that a certificate therefor is hereby granted to Pacific Motor Trucking Company subject to the following conditions:

1. No service may be given under the authority herein granted except at such times as the railroad line, or some part thereof, of Northwestern Pacific Railroad Company north of Willits cannot be operated due to floods, washouts, land slides, cave-ins or other similar causes beyond the control of said Northwestern Pacific Railroad Company and in no case may service be provided thereunder for a period in excess of six consecutive months.

2. Applicant shall file a written acceptance of the certificate herein granted within a period or not to exceed fifteen (15) days from date hereof.

3. Applicant shall file in triplicate, within a period not to exceed thirty (30) days from the effective date hereof, and concurrently make effective on not less than ten days' notice to the Railroad Commission and the public, a tariff or tariffs constructed to conform with the certificate herein granted and in accordance with the requirements of the Commission's General Orders which shall set forth where rates available to the general public may be found.

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, a time schedule or 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 the Commission's General Order No. 91.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 20<sup>th</sup> day of November, 1938.

Raymond A. Smith  
Iron Authority

Ray L. Carey

COMMISSIONERS