Decision No. 31982

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of PACIFIC MOTOR TRUCKING COMPANY for certificate of public convenience and necessity for the transportation by motor trucks of railroad traffic in the San Joaquin Valley, etc.	Application No. 18,699 (Supplemental)
In the Matter of the Application of PACIFIC MOTOR TRUCKING COMPANY for a certificate to transport property by motor trucks under contract between Metz and San Luis Obispo, etc.	Application No. 18,881 (Supplemental)
In the Matter of the Application of PACIFIC MOTOR TRUCKING COMPANY for certificate to transport by motor truck freight and express between railroad stations of Southern Pacific Company and/or Visalia Electric Railroad Company, etc., southeast of Fresno, et al.	Application No. 19,062 (Supplemental)
In the Matter of the Application of SANTA FE TRANSPORTATION COMPANY for certificate of public convenience and necessity to operate auto truck service between Fresno and Porterville and intermediate points.	Application No. 19,030 (Supplemental)
In the Matter of the Application of PACIFIC MOTOR TRUCKING COMPANY for 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. 19,563

In the Matter of the Application of PACIFIC MOTOR TRUCKING COMPANY for certificate of public convenience and necessity for the transportation of property by motor truck for other common carriers between Mojave and Saugus and intermediate points.

Application No. 20,297

BY THE COMMISSION:

OPINION AFTER ORAL ARGUMENT ON REHEARING

The Commission by Decision No. 31042, dated June 27, 1938, generally affirmed certain of its previous decisions[1] which (1) enlarged the authority heretofore granted by authorizing the use of line haul trucks for pickup and delivery service (a) in conjunction with the operative rights possessed by Pacific Motor Trucking Company to operate as a highway common carrier for the distribution of railroad traffic between points located on the Stratford, Riverdale, Coalinga and Kerman branches, and on the main line of the Southern Pacific Company between Fresno and Goshen Junction and between San Luis Obispo and Metz, and (b) in conjunction with the operative right possessed by the Santa Fe Transportation Company to operate as a highway common carrier between Fresno, Porterville and intermediate points located on the lines of The Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as Santa Fe, and (2) authorized the Pacific Motor Trucking Company to operate as a highway

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1 Decision No. 26261 of August 21, 1933, and Decision No. 30110, dated September 7, 1937, on Application No. 18699; Decision No. 26939 of April 16, 1934, and Decision No. 30110 of September 7, 1937, on Application No. 18881; Decision No. 27234 of July 30, 1934, and Decision No. 30110 of September 7, 1937, on Application No. 19030; Decision No. 27235 of July 30, 1934, and Decision No. 30110 of September 7, 1937, on Application No. 19062; Decision No. 30098 of September 7, 1937, on Application No. 19563; and Decision No. 30088 of September 7, 1937, on Application No. 20297.

common carrier between Santa Barbara and Montecito and between Saugus and Mojave and intermediate points.

Protestants[2] in these proceedings filed petitions for rehearing which were granted. The matters were orally argued before the Commission en banc on July 22, 1938.

A clear understanding of the issues involved requires at least a brief sketch of the historical attempt on the part of the two major railroads in California to improve their freight service and to effect economies in operating costs. Aproximately ten years ago the Southern Pacific Company, alarmed at the substantial losses of their less than carload traffic to truck carriers, embarked upon a program, through the medium of their wholly owned subsidiary Pacific Motor Transport Company,[3] to provide a pickup and delivery service at all agency stations on its line in California, Oregon and Arizona. The Pacific Motor Transport Company, operating as an express corporation as defined in Section 2(k) of the Public Utilities Act, originally published, as an experiment, rates from and to points on the Pacific Electric Railway, later extended such rates between certain main line points on the Southern Pacific and still later extended its service to apply over all of Southern Pacific's lines in the state and over the lines of many other transportation companies. Shipments were transported under Pacific Motor Transport bills of lading. Pickup and delivery service at the terminals was

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2 Pacific Freight Lines, Keystone Express Company, Besone Motor Express, The Arvin Line, Valley & Coast Transit Company, Coast Line Express, Valley Express Company, Valley Motor Lines, Inc., George Harm Truck Lines, Frasher Truck Line, Fortier Brothers, Huntington Stage Lines and Triangle Transfer, F. F. Sullivan, doing business as Red Line Express.

3 The Pacific Motor Transport Company, originally known as Pacific Electric Motor Transport, was, at its inception, a wholly owned subsidiary of the Pacific Electric Railway, which in turn was a wholly owned subsidiary of the Southern Pacific Company.

performed largely by local draymen operating under contract with the Pacific Motor Transport, while the line haul service between the terminals was performed by various transportation companies under contracts between them and Pacific Motor Transport. Pioneer Express Company, et al. vs. Pacific Motor Transport, et al., 37 C.R.C. 102.

In conjunction with the service rendered by Pacific Motor Transport, and in consonance with the program of the Southern Pacific Company to render expedited store-door service and effect operating economies, truck transportation as a highway common carrier was commenced, first by Pacific Motor Transport and thence by Pacific Motor Trucking Company, one of the applicants in these proceedings.[4] Pacific Motor Trucking Company holds numerous certificates of public convenience and necessity, authorizing it to transport property, which operative rights are generally restricted to the movement under contract of traffic covered by the billing of and moving under the tariff rates of Southern Pacific Company, Pacific Motor Transport, Railway Express Agency, Inc., and carriers of the same classes.

By Decision No. 30723, dated March 21, 1938, in Application No. 21599, Pacific Motor Transport was authorized to discontinue operation as an express corporation and since August 1, 1938, the transportation service formerly afforded by Pacific Motor Transport has been rendered by Southern Pacific Company and the other transportation companies over whose lines Pacific Motor Transport's traffic was moved. This service is carried on under appropriate local and joint freight tariffs filed with the Commission. Pickup and delivery service, and line haul substituted truck service, is performed in much the same manner as prior to August 1, 1938, being unaffected by the

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[4] Pacific Motor Trucking Company, originally a subsidiary of Pacific Motor Transport and later of Southern Pacific Company, commenced highway common carrier operations in July, 1933.

cessation of operation by Pacific Motor Transport.

Like the Southern Pacific Company, the Santa Fe inaugurated a store-door pickup and delivery service, but under its own name. Pickup and delivery service is performed largely by draymen under contract. Substituted line haul truck service, in lieu of rail service, has been performed by Santa Fe Transportation Company, a wholly owned subsidiary of Santa Fe, the second of the applicants in these proceedings.

The major highway Common carriers, protestants in these proceedings, claim that these applications and others pending before the Commission, if granted, will constitute an unwarranted and needless invasion by the railroads into a field which, over a period of years, has assertedly been abandoned by the rails and which field had been pioneered by the truck lines. Between the two diametrically opposed views stands the shipping public, which, while having voiced no complaint against the character of service rendered by the truck lines in the field which they serve, would, for the most part, like to see the rail service improved.

The truck carriers strongly urge that the record in these proceedings falls far short of establishing public convenience and necessity according to the standard laid down by the Commission In re Application of Santa Clara Valley Auto Line, 14 C.R.C. 112, 118, and other cases, to the effect that the Commission will be slow to permit a competitor to enter a field already adequately served by an existing utility. See also P. G. & E. Co. vs. Great Western Power Co., 1 C.R.C. 209, and In re Oro Electric Co., 2 C.R.C. 755. A review of the evidence of record in these proceedings is contained in Decision No. 31042.

Public convenience and necessity is a definite and well understood term. Difference of opinion arises only as to the degree or character of proof necessary to establish its existence. There has never been nor can there be prescribed a hard and fast rule or

formula for its determination as a mathematical proposition. However, general standards for the determination of public convenience and necessity have from time to time been laid down by the Commission and the courts. Suffice it to say that public convenience and necessity is synonymous with the public interest. The public interest, in a broad sense, comprehends a utility system fully meeting the requirements of the public, each agency rendering service in the field which it can most efficiently serve at the lowest cost to the public, but at rates sufficiently high to maintain the utility system in full vigor and thus insure a continuing and enduring service to the public.

The question here presented for determination is whether the public interest will best be served by permitting the rails, through their subsidiaries, to give effect to the improvements and economies which they here propose and whether the protesting truck carriers would be unduly harmed thereby.

Before proceeding to a determination of these questions, we may fairly say that, with the possible exception of the application covering the proposed truck operations between Saugus and Mojave, the granting of these applications will not materially affect protestants. The carrier serving the territory between Saugus and Mojave is a small operator relying mainly on local traffic for its revenue. However, protestants are vitally concerned with the possible results that may flow from the adoption of a broad principle which would allow the rails to pursue their program unrestrained.

These proceedings fall into the three following classes:

1. Where applicants now operating trucks between railroad depots are not permitted to use those trucks for pickup and delivery service, desire to perform a pickup and delivery service with the same trucks.

2. Where applicants are requesting authority to operate trucks in line haul and pickup and delivery service within reasonable distances of the break-bulk points and the major part of the traffic is incidental to a rail haul prior to, or subsequent to, the truck movement.

3. Where applicants are requesting authority to operate trucks in the same manner as described in the preceeding paragraph, but where the truck operation will, in effect, constitute placing an added carrier in a purely local territory where a substantial diversion of traffic from the existing carrier may jeopardize the continuation of his service.

The solution of the issues presented in each of these classes will serve not only as a means of determining the questions presented in these particular proceedings, but, to a large extent, may be followed as a policy in the determination of other proceedings, including those now pending and those which may be submitted in the future as the rails attempt to give further effect to their program of improvement and economy.

1. WHERE APPLICANTS NOW OPERATING TRUCKS BETWEEN RAILROAD DEPOTS, DESIRE TO PERFORM PICKUP AND DELIVERY SERVICE WITH THE SAME TRUCKS.

The rails have on file with the Commission tariffs providing for store-door pickup and delivery service. These carriers, as a matter of right, may now, and in many instances do, perform pickup and delivery service under contract with draymen. In actuality, however, such a service is not rendered at many of the points covered by the applications here involved, due to the inability of the rails, for one reason or another, to employ suitable draymen. In the case of some of the smaller communities there are no draymen whom the rails can employ. As a result, the shipping and receiving public at such communities is unable to get pickup and delivery service on rail shipments.

The principal objection raised by the petitioning highway carriers is not so much that the rails, through their subsidiaries,

should not be allowed to perform their own pickup and delivery service with their line haul trucks within the long-established and well-recognized pickup and delivery zones bounded in the rails' tariffs, as it is that by the simple process of tariff amendment, the rails would be enabled to so enlarge their field of pickup and delivery as to make a continuous zone or succession of zones extending unbroken between the extreme termini of the line haul truck operation. Whatever merit might have been accorded this view, it seems clear that no sound cause for alarm from this source can exist if the restriction proposed in Decision No. 31042, supra, is given effect. By this restriction the right to perform pickup and delivery service by line haul trucks would be confined to the zones described in the tariffs of the rail carriers on file with the Commission as of June 27, 1938, the date upon which Decision No. 31042 was issued.

The record shows that the public desires pickup and delivery service, whether in connection with rail or highway carrier service. It is equally clear that such service cannot, in many instances, be rendered unless the rails perform the service themselves, either with their present line-haul trucks, with the Commission's approval, or with separate motor truck equipment. The light volume of traffic to be delivered in each of the many small communities involved renders it uneconomical for the rails to take advantage of the second alternative. The public need and the desirability of promoting economy in the performance of public transportation well justify authorizing the rails to use their line haul trucks for pickup and delivery service, subject of course to the restriction hereinabove discussed. The granting of this authority creates no new operative right as the rails already possess that right, to which, if it were not for the existence of physical and economic impediments beyond their control, the rails could give effect.

2. WHERE APPLICANTS ARE REQUESTING AUTHORITY TO OPERATE TRUCKS IN LINE HAUL AND PICKUP AND DELIVERY SERVICE WITHIN REASONABLE DISTANCES OF THE BREAK-BULK POINTS AND THE MAJOR PART OF THE TRAFFIC IS INCIDENTAL TO A RAIL HAUL PRIOR TO OR SUBSEQUENT TO THE TRUCK MOVEMENT.

A great many of the applications filed by the rails, through their subsidiaries, for highway common carrier rights, like most of the instant applications, have involved an intended use of the authority requested to transport property, the preponderance of which is dependent upon a prior or subsequent rail haul in continuous movement. That this has been the case is no doubt due to the fact that the rails find it more economical to hold to the rail those movements of relatively greater distances where property in transit in a given general direction can be consolidated into cars destined to central break-bulk stations, in through trains, thereby producing a more efficient loading and use of rail cars. Beyond these break-bulk stations, as is the case in some of the instant applications, it has frequently been demonstrated that, due to relatively light loadings and the comparatively expensive operation of local way-freight trains, substantial operating economies can be effected and time in transit materially reduced by the use of substituted line haul truck service. Another strong contributing factor is that the large jobbing and distributing centers in the San Francisco Bay region and in the Los Angeles area produce the great bulk of less carload traffic moving to most of the smaller communities of the state. In general, the proportion of distance which traffic is transported in line haul trucks is small as compared to the distances the same traffic is transported in rail cars. The truck constitutes but an adjunct to the rail facility. In cases of this class the Commission has generally approved the proposals of the rails to improve service and effect operating economies. We believe that the public interest may best be served by continuing to follow this policy in the instant proceedings insofar as it appears that the majority of the traffic to be transported in line haul trucks

is incidental to a rail haul, and where the highway distances are not excessive. It has not been demonstrated that the granting of such applications has been or would be unduly harmful to the highway carriers.

3. WHERE APPLICANTS ARE REQUESTING AUTHORITY TO OPERATE TRUCKS IN LINE HAUL AND PICKUP AND DELIVERY SERVICE BUT WHERE THE TRUCK OPERATION WILL, IN EFFECT, CONSTITUTE PLACING AN ADDED CARRIER IN A PURELY LOCAL TERRITORY WHERE A SUBSTANTIAL DIVERSION OF TRAFFIC FROM THE EXISTING CARRIER MAY JEOPARDIZE THE CONTINUATION OF HIS SERVICE.

Occasionally the rails, through their subsidiaries, as in the case of one of the instant proceedings, have sought authority to operate trucks in lieu of performing rail service between points where there is a substantial movement of local traffic. In such cases, it has sometimes been shown that the highway common carriers operating between such points were largely dependent upon such local traffic for their revenue. It is with respect to this class of application that real merit may be accorded to the fears expressed by the protestants in these proceedings were the Commission to adopt a policy of permitting the rails to give full effect to their program.

However, it has not been the policy of the Commission to grant this class of application without appropriate restriction to prevent a needless and unwarranted invasion of the revenues of the highway common carriers and thus undermine a public transportation service inaugurated and maintained in the public interest. In Decision No. 31135, dated July 30, 1938, on rehearing of Application No. 18981 of Pacific Motor Trucking Company to extend an operative right it then held between Los Angeles and Los Angeles Harbor, so as to permit service between Los Angeles and Long Beach, the Commission set aside its former order granting the application saying:

"While it is true that the applicant would be enabled to expedite, by means of this proposed truck service, the traffic which is incidental to the rail haul that moves between Los Angeles and Long Beach and originates at or is destined to points beyond Los Angeles, and while it is furthermore true that certain economies in the operation of applicant's proposed truck service would be effected, the more important fact remains that the great bulk of all L.C.L. traffic moving between Los Angeles and Long Beach is local traffic, i.e., traffic limited to these two points. It clearly appears that this application is for the primary purpose of placing in the field another truck carrier to handle traffic which inherently is local in character, i.e., traffic between Los Angeles and Long Beach, and which is now being handled adequately and satisfactorily by existing highway common carriers. The traffic incidental to the rail haul involved, as compared to the total traffic moving by all carriers between Los Angeles and Long Beach, is negligible."

In the case of Application No. 20297, in which Pacific Motor Trucking Company seeks authority to perform line haul and pickup and delivery service between Saugus, Mojave and intermediate points, the record shows that the major volume of the traffic that would be affected is local between the Los Angeles metropolitan area and the points sought to be served.

The territory between Los Angeles and Lancaster is now served by Sullivan, doing business as Red Line Express, a small highway common carrier, depending almost entirely upon local traffic between Los Angeles and Lancaster for his revenue. It seems clear from the volume of local traffic available between Los Angeles and Lancaster that any appreciable diversion of traffic from Sullivan's line might well unduly jeopardize its chances of existence.

North of Lancaster the proposed service is not competitive with present highway common carrier service and while relatively the rail haul is not great, as compared with highway haul, we believe the public interest requires authorization of the proposed service.

Application No. 20297 will be granted subject to a restriction that local traffic moving between Los Angeles and Lancaster and intermediate points may not be handled.[5]

Based upon all of the facts of record and after having carefully considered protestants' petitions for rehearing and each and every allegation therein contained, we are of the opinion and conclude, that except to the extent hereinbefore indicated, that the public interest will be subserved by affirming Decision No. 31042, supra.

O R D E R

Oral argument on petition for rehearing having been had in these proceedings, the matters having been resubmitted and the Commission being fully apprised of the facts,

IT IS HEREBY ORDERED that the fourth ordering paragraph 1 of Decision No. 31042, dated June 27, 1938, in Application No. 20297, appearing on sheet 27 of said decision, be and it is hereby amended to read as follows:

> "IT IS HEREBY FURTHER ORDERED that the order contained in Decision No. 30088, on Application No. 20297, be and the same is hereby amended by adding thereto the following conditions to be designated as Conditions Numbers 7 and 8, respectively:
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> (7) Applicant shall not transport any property having both origin and destination in the territory between Mojave and Rosamond, and intermediate points. Nor shall applicant transport any property between Saugus and Lancaster, and points intermediate thereto, having origin or destination in Los Angeles.
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> (8) Applicant shall have the right to operate its vehicles over the Mint Canyon Highway between its intersections with the Soledad Canyon Highway as an alternate route without the right to serve any point along said Mint Canyon Highway."

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[5] During the course of the hearing, counsel for applicant stipulated that the certificate, if granted, might be restricted for the transportation of property between Mojave and Rosamond and intermediate points. This restriction was given effect in Decision No. 31042.

IT IS HEREBY FURTHER ORDERED that in all other respects Decision No. 31042, dated June 27, 1938, in the above entitled proceedings, be and it is hereby affirmed.

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

Dated at San Francisco, California, this 30th day of March, 1939.

COMMISSIONERS