

Decision No. 32352

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of PACIFIC MOTOR TRUCKING COMPANY, a corporation, for a certificate of public convenience and necessity to operate motor vehicles for the transportation of property over the public highways from the intersection of Permanente Road and Stevens Creek Road along Permanente Road and an unnamed county highway to Permanente, and to consolidate such operations with existing operations.

ORIGINAL

Application No. 22906

BY THE COMMISSION:

O P I N I O N

By virtue of the authority granted by the Commission's Decision No. 25720, as amended by Decision No. 30273, on Application No. 18758, applicant Pacific Motor Trucking Company now is providing a highway common carrier service between Mayfield and Los Gatos and intermediate points and between Monta Vista and San Jose and intermediate points, for traffic moving in the custody of the Southern Pacific Company and the Railway Express Agency, Incorporated, under contracts with said carriers.

In this application, Pacific Motor Trucking Company requests a certificate of public convenience and necessity for the establishment and operation of a highway common carrier service for the transportation of property for compensation, between a point at the intersection of Permanente Road and Stevens Creek Road and Permanente, over and along Permanente Road, as an extension and enlargement of its present operative right between Mayfield

and Los Gatos and between Monta Vista and San Jose, as hereinafter referred to.

In support of the application, it is alleged substantially as follows:

A large cement plant now is being constructed at Permanente and a substantial volume of traffic is now moving to Permanente for the construction of such plant. When the plant is completed and put in operation, a large volume of tonnage will move from such plant. At the present time, Southern Pacific Company, of which applicant is a wholly owned subsidiary, is engaged in constructing a railroad track from Simla to Permanente for the purpose of serving the cement plant by rail. As the cement plant is now in the course of construction and material and supplies are immediately required in the construction of the new plant, the service proposed by applicant should be inaugurated at as early a date as possible.

Applicant further alleges that public convenience and necessity require that said cement plant be served by truck as well as by rail.

Applicant proposes to charge the public the minimum rates prescribed by the Commission in its Decision No. 31606, as amended. The proposed operation, it should be noted, is to be as an extension of a right created by Decision No. 25720, hereinbefore referred to, which authorized service as an underlying carrier for the Southern Pacific Company and the Railway Express Agency, Incorporated, under contract. It appears, therefore, that in granting the authority for the extension of service to Permanente, it should be restricted to the same class of traffic. It further appears that in view of the fact that applicant's existing certificate permits of a connection or interchange with Southern Pacific Company's rail line at Simla and points south thereof, carload shipments to or from Permanente should be restricted to such connections and thereby prevent the operation of heavy trucking through the residential section between Simla and Mayfield.

This is not a matter requiring a public hearing, and the application 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, of an automotive service, as a highway common carrier, as defined in section 2-3/4 of the Public Utilities Act, for the transportation of property moving in the custody of Southern Pacific Company or Railway Express Agency, Incorporated, between a point at the intersection of Permanente Road and Stevens Creek Road and Permanente, over and along Permanente Road, as an extension and enlargement of the operative right heretofore created by the Commission's Decision No. 25720, as amended by Decision No. 30273.

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

1. The authority herein granted shall lapse and be void if applicant shall not have complied with all of the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.
2. Applicant shall file a written acceptance of the certificate herein granted within a period not to exceed thirty (30) days from the effective date hereof.
3. Applicant shall commence the service herein authorized within a period not to exceed thirty (30) days from the effective date hereof, and shall file in duplicate, and make effective within said period, on not less than five (5) days' notice to the Railroad Commission and the public, a time schedule covering the service herein authorized in a form satisfactory to the Railroad Commission.
4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission thereto has first been obtained.
5. Carload shipments to or from Permanente shall be restricted to connections with the Southern Pacific Company at Simla and points south thereof.

The effective date of this order shall be the date hereof.

Dated at Los Angeles, California, this 26<sup>th</sup> day of  
September, 1939.

Ray W. Bequest

Carl P. Wiley

Justus D. Coenen  
COMMISSIONERS